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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 UNITED STATES OF AMERICA

4 v.

11 Cr. 62 (PAC)

5 DONNA LEVY,
6 DAVID LEVY,

Jury Trial

7 Defendants.

8 -----x

9 New York, N.Y.
10 March 8, 2013
11 11:00 a.m.

12 Before:

13 HON. PAUL A. CROTTY

District Judge

14 APPEARANCES

15 PREET BHARARA

16 United States Attorney for the
17 Southern District of New York

CARRIE H. COHEN

HOWARD S. MASTER

18 Assistant United States Attorneys

19 HOWARD M. SREBNICK

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21 Attorneys for Defendant Donna Levy

22 GERALD L. SHARGEL

23 ROSS M. KRAMER

JENNIFER HAYS

24 Attorneys for Defendant David Levy

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(Trial resumed; jury present)

ZEV HELFER, resumed.

THE COURT: Thank you for making it in today. I know it wasn't easy. We won't be taking a morning break. We will go right to the luncheon recess. You have placed your luncheon orders. We will take a short lunch and then resume this afternoon a little bit earlier.

Mr. Helfer, I want to remind you that you are still under oath.

CROSS-EXAMINATION

BY MR. SHARGEL:

Q. Good morning, Mr. Helfer.

A. Good morning.

Q. When you were testifying on direct examination yesterday, meaning when the prosecutor was asking you the questions, you were asked a question about a company called HealthCare Options, Inc. Do you recall that question?

A. I remember, yes.

Q. Referring to Government Exhibit 201-49M --

MR. SHARGEL: Is it possible to put that up on the screen into moment?

Q. I'm going to address your attention to the top line, "Cardiac Network, Inc. expands sales reach through HealthCare Options, Inc." Do you see that?

A. Yes.

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Helfer - cross

1 Q. Do you remember testifying yesterday that you had no idea
2 what this was about?

3 A. Yes.

4 Q. Do you recall saying yesterday that you never heard of
5 HealthCare Options, Inc.?

6 A. Yes.

7 Q. Sir, I direct your attention to what's been marked for
8 identification as Defense Exhibit C6.

9 MR. SHARGEL: May I approach the witness, your Honor?

10 THE COURT: Yes, you may.

11 Q. I put this before you and I ask if you recognize it, sir.
12 Do you recognize it?

13 A. Not really.

14 Q. When you say not really, is your signature on the last
15 page?

16 A. Yes.

17 Q. Is it your testimony, sir, that that document with your
18 signature on the last page does not refresh your recollection
19 about that?

20 A. No.

21 Q. Put that aside for one moment. Let me ask you this
22 question. Did you control the bank account at Cardiac when you
23 were still in charge?

24 A. Yes.

25 Q. You were able to sign checks, right?

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Helfer - cross

1 A. Yes.

2 Q. There was only one other person that was able to sign
3 checks, right?

4 A. Yes.

5 Q. That was Eric Buchwald, correct?

6 A. Yes.

7 Q. So only you and Eric Buchwald could sign checks, correct?

8 A. Right.

9 Q. Is it still your testimony as you sit there now that you
10 are not familiar with this company called HealthCare Options?
11 Is that still your testimony?

12 A. Yes.

13 Q. Let me show you first what's been marked for identification
14 as Exhibit BL. I'm going to offer this other exhibit at a
15 later time. But let me show you BL for identification. Do you
16 recognize that document?

17 A. Yes.

18 Q. What do you recognize it to be?

19 A. Signature card to the bank.

20 Q. You're on that signature, correct?

21 A. Correct.

22 Q. Your signature appears on that, right?

23 A. I answered it.

24 Q. And Mr. Buchwald, his signature appears there as well,
25 right?

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Helper - cross

1 A. Yes.

2 Q. What official position did Mr. Buchwald have in the company
3 at that period of time?

4 A. It says here secretary.

5 Q. I'm not asking you about what it says there. It's not in
6 evidence yet. My question to you, sir, is, what position? You
7 were the CEO, correct?

8 A. Yes.

9 Q. You actually acted as the CFO, chief financial officer, as
10 well, right?

11 A. Yes.

12 Q. You wore both hats, right?

13 A. Yes.

14 Q. You can put the exhibit down. I'm going to ask you from
15 your memory, what was Mr. Buchwald's position?

16 A. He was a vice president.

17 Q. Let me show you, sir, what's been marked for identification
18 a Defense Exhibit C4. I put Defense Exhibit C4 in front of you
19 and I ask if you recognize the documents that appear on those
20 pages.

21 A. I do.

22 Q. What do you recognize that to be?

23 A. Payments to HealthCare Options.

24 Q. By check?

25 A. By check.

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Helfer - cross

1 Q. Who signed the check, Mr. Helfer?

2 A. Myself.

3 Q. I'm sorry?

4 A. Myself.

5 Q. You signed those checks. Those checks are made out to
6 HealthCare Options, right?

7 A. Correct.

8 Q. If you take my word for it, if those are added up, those
9 would add up to more than \$20,000?

10 A. I'll take your word for it.

11 MS. COHEN: Objection, your Honor.

12 THE COURT: Overruled.

13 Q. Sir, as you sit there now, do you want to look at that
14 further? I see you continue to look. Do you need more time to
15 look at it?

16 A. I'm just not familiar with the name HealthCare Options.

17 Q. But you, sir -- excuse me -- you, sir, in a company that
18 was desperate for money as you have explained, right?, you
19 wrote checks in the amount of more than \$20,000 to HealthCare
20 Options.

21 A. In 2007.

22 Q. In 2007 you wrote checks in that exhibit --

23 MR. SHARGEL: I offer that exhibit in evidence, your
24 Honor.

25 THE COURT: Which one is that, Mr. Shargel?

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Helfer - cross

1 MR. SHARGEL: That is C4.

2 THE COURT: Any objection to C4, Ms. Cohen?

3 MS. COHEN: No, your Honor.

4 THE COURT: C4 is in evidence.

5 (Defendant's Exhibit C4 received in evidence)

6 Q. In 2007 you wrote more than \$20,000 in checks to HealthCare
7 Options, and it's your testimony as you sit here now that you
8 have no idea what this company is?

9 MS. COHEN: Objection, your Honor.

10 THE COURT: Overruled. Would you answer the question.

11 A. I don't remember.

12 MR. SHARGEL: I ask permission to publish the checks
13 at this time, your Honor.

14 THE COURT: Yes. This is C4 now, Mr. Shargel?

15 MR. SHARGEL: C4, yes. We are going to do this
16 quickly. Jennifer, could you turn the pages so the jury sees
17 each page. Take a moment with each page, please.

18 Q. Do you see the date on that check, sir?

19 THE COURT: Which one now? That's the eleventh check
20 we have seen.

21 Q. Check No. 2888.

22 THE COURT: Do you see the date on it, Mr. Helfer?

23 A. Yes. March 31, 2008.

24 THE COURT: March 31, 2008.

25 MR. SHARGEL: That's the last one? No.

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Helfer - cross

1 Q. Let me ask you this question, if I may. Every month who
2 prepared the checks? Who actually prepared the checks?

3 A. My secretary.

4 Q. Every month your secretary would present you with checks to
5 be signed, right?

6 A. Correct.

7 Q. You, as the person in charge of the company, every month,
8 month after month after month, would sign a check. At times
9 things were very rough financially, right? Yes?

10 A. If you say so.

11 Q. I don't want what I say so. My question to you, sir, is
12 during this period of time in 2007 and 2008, you described
13 yesterday that you were having great financial difficulties,
14 correct?

15 A. Yes.

16 Q. There were times when you couldn't even take a salary,
17 right?

18 A. Correct.

19 Q. You couldn't even meet the expenses of the office, right?

20 A. Correct.

21 Q. You were desperate for cash, right?

22 A. Correct.

23 Q. You were seeking out lenders, right?

24 A. Correct.

25 Q. Sources of financial support, right?

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Helfer - cross

1 A. Yes.

2 Q. Each and every month you are making out checks to
3 HealthCare Options, and your testimony, sir, is that you don't
4 have any idea what this company is?

5 A. I don't remember. It's six years ago. I really honestly
6 don't remember.

7 Q. Looking at what's been marked for identification as C6, now
8 that you had a chance to see the checks, I put the question to
9 you again, sir: Is it not a fact that you entered into that
10 contract with HealthCare Options, Cardiac and HealthCare
11 Options?

12 A. I don't remember.

13 Q. But that's your signature at the last page, right?

14 A. It is my signature.

15 MR. SHARGEL: Your Honor with the foundation of the
16 checks, I offer it into evidence.

17 MS. COHEN: No objection, your Honor.

18 THE COURT: C6, Mr. Shargel?

19 MR. SHARGEL: Yes, your Honor.

20 THE COURT: C6 is in evidence.

21 (Defendant's Exhibit C6 received in evidence)

22 MR. SHARGEL: May I retrieve those documents?

23 THE COURT: Yes, you may.

24 Q. When you were shown the exhibit 201-49M yesterday, we just
25 saw it on the screen a moment ago, that was the press release,

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Helfer - cross

1 right?

2 A. Yes.

3 Q. When the press release that was on the screen, there it is,
4 when the press release -- that's not it. That's the contract.
5 We need the press release, 201-49M. I'll give you this one and
6 ask the question without the benefit of that press release?

7 THE COURT: You're going to see it on the screen.

8 MR. SHARGEL: We have it.

9 Q. We had this before, when the first line said --

10 MR. SHARGEL: Is it possible to zoom in on the San
11 Francisco, California portion? Thanks so much.

12 Q. "Cardiac Network expands sales reach through HealthCare
13 Options." That's good news, right?, for the company at that
14 time, right?

15 A. I don't remember who HealthCare Options was.

16 Q. Didn't you say yesterday that you had no knowledge of this
17 press release?

18 A. I'm still saying it.

19 Q. You signed the agreement with HealthCare Options but you
20 have no knowledge of what this is about?

21 A. It was six, seven years ago, and I really don't recall it.

22 Q. You were asked the question yesterday, a different question
23 on a different topic, at page 289 of the record you were asked
24 about a company called DLM Marketing, right? DML Marketing,
25 you remember that?

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Helper - cross

1 A. Correct.

2 Q. You remember saying yesterday that you never heard of that
3 company?

4 A. I still say that.

5 Q. You still say that you never heard of that company?

6 A. No.

7 Q. Let me show you what's been marked for identification as
8 Defense Exhibit B1. Let me first ask you this question. On
9 February 22, 2007, what was your role at Cardiac Network?

10 A. I was the CEO of the company.

11 Q. No question about that, right?

12 A. No question about that.

13 Q. Now let me show you what's been marked as Defense Exhibit
14 B1 for identification. I ask you to look at it and tell me if
15 you recognize that, sir.

16 A. I understand what it says here, but I don't recall.

17 Q. You don't have any recollection of that?

18 A. No.

19 Q. Is there a check that's made out to Cardiac?

20 A. Yes.

21 Q. It was made out at a time, it was received at a time --
22 look at the endorsement on the back.

23 A. February 23, 2007.

24 Q. It's endorsed by -- we are not going to talk about the
25 content yet. It was negotiated by Cardiac, was it?

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Helper - cross

1 A. I don't recall. I really don't recall.

2 MR. SHARGEL: I offer this into evidence, your Honor.

3 MS. COHEN: No objection, your Honor.

4 THE COURT: B1 is in evidence.

5 (Defendant's Exhibit B1 received in evidence)

6 MR. SHARGEL: I ask that it be published to the jury.

7 Hold on a second.

8 Q. You see the check, right?

9 A. I see it, yes.

10 MR. SHARGEL: Could we focus in a little tighter on
11 the check itself.

12 Q. DML Marketing Corp. writes a check to Cardiac Network,
13 Inc., right?

14 A. Yes.

15 Q. The proper title, the amount of, \$3,394.67, correct?

16 A. Yes.

17 Q. In the legend portion of the check, the memo portion, it
18 says balance of \$15,000 loan, right?

19 A. Yes.

20 Q. As you sit here now, did DML Marketing lend Cardiac
21 Network, Inc. \$15,000?

22 A. If you will give me the name of the owner of DML, it might
23 refresh my memory. But the name DML does not ring a bell.

24 Q. Let me see if I can help you. You said that you had your
25 conversations in the main, for the most part, after you met the

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Helper - cross

1 Levys, with Donna Levy, remember that?

2 A. When it came to press releases, yes.

3 Q. Now I'm going to give you a name. Donna M., Michelle,
4 Levy.

5 A. OK.

6 Q. Does it start to ring a bell here?

7 A. No.

8 MR. SHARGEL: Can you get closer.

9 Q. Is that a clue?

10 MS. COHEN: Objection, your Honor.

11 THE COURT: Sustained.

12 Q. Do you see the signature that says --

13 A. I see the signature.

14 Q. -- Donna M. Levy?

15 A. I do.

16 MR. SHARGEL: May I have a moment, your Honor?

17 Q. After February 22, 2007, you asked Donna Levy for more
18 money, right?

19 A. Donna, no.

20 Q. Did you ever have a conversation about getting money from
21 Donna Levy?

22 A. Donna Levy, no. It was David Levy and Fotis Georgiadis.

23 Q. Let me show you what's been marked for identification as
24 Defense Exhibit B2, B as in boy.

25 THE COURT: Do you have a question, Mr. Shargel?

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Helper - cross

1 MR. SHARGEL: Yes. My understanding, as Mr. Srebnick
2 just reminded me, is that this exhibit is in evidence by the
3 stipulation.

4 Q. In all events, procedure aside, do you recognize it?

5 A. Yes.

6 Q. What do you recognize it to be?

7 A. It's a deposit and credit. It's a ledger from the bank.

8 Q. For what month is this?

9 A. June 1, 2007.

10 Q. I'm sorry?

11 A. June 1, 2007.

12 Q. Isn't it through June 30, 2007?

13 A. 29th. Maybe the next page.

14 MR. SHARGEL: May I, Judge?

15 THE COURT: Yes.

16 Q. If I could direct your attention. Actually, it is in
17 evidence. May I read it? It says the account number and then
18 the statement period June 1, 2007 through June 30, 2007.

19 Here is my question to you, sir. Look at a wire
20 transfer. Well, we don't have to do that. Let's just blow up
21 the bottom part, just blow it up. Do you see on June 14, 2007
22 \$30,000 is wired to the Cardiac account?

23 A. Yes.

24 Q. Do you who the originator of the wire is?

25 A. DML.

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Helfer - cross

1 Q. DML Marketing Corp., right?

2 A. Right.

3 Q. The same name that appeared on the check, right?

4 A. Right.

5 Q. Is it your testimony even to this moment that you have no
6 idea what DML Marketing is?

7 A. And I can explain it.

8 Q. You will have your chance when it is redirect examination.
9 My question to you, sir, is, is it your testimony that DML
10 Marketing that wired \$30,000 to you on June 14, 2007, you have
11 no knowledge? Yes or no.

12 A. No, I do have knowledge. Here it is. The money was
13 deposited or wired into the account, there is no doubt about
14 it.

15 Q. Can you remember a single conversation about that money?
16 This is calling for a yes or no.

17 A. No.

18 Q. Do you remember a single conversation concerning this wire
19 transfer?

20 A. No.

21 Q. I'm sorry?

22 A. No.

23 Q. Let me show you what's been marked for identification as
24 Defense Exhibit A45. I can take these papers away so we don't
25 have a paper clutter here. Give me one moment. Look at A45.

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Helfer - cross

1 Have you had a chance to look at it?

2 A. Yes.

3 Q. What do you recognize this to be?

4 A. The deposit highlighted?

5 Q. Sir, you can read any part you wish. Just tell us what it
6 is.

7 A. A deposit and credit ledger.

8 MR. SHARGEL: This is already in evidence, your Honor,
9 through stipulation.

10 Q. This is \$500,000?

11 A. Correct.

12 Q. Being deposited into Cardiac Network on August 23, 2007, do
13 you see that?

14 A. Yes.

15 Q. Do you remember this deposit?

16 A. Yes.

17 Q. This deposit was from Bedrock Ventures?

18 A. Yes, sir.

19 Q. That's from Mr. Georgiadis?

20 A. Georgiadis, Fotis.

21 Q. Fotis Georgiadis. Now I want to show you another exhibit.
22 Let me show you what's been marked for identification as A48.
23 Actually again this is evidence. I'm sorry that I misspoke.

24 MR. SHARGEL: Your Honor, if I may approach. A
25 procedural correction. They are admissible. The stipulation

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Helfer - cross

1 is that they are admissible, so I have to actually move them in
2 evidence. So I move Defense Exhibit A45 and I move Defense
3 Exhibit A48, both for identification, in evidence.

4 MS. COHEN: No objection.

5 THE COURT: A45 and A48 are received in evidence.

6 (Defendant's Exhibits A45 and A48 received in
7 evidence)

8 Q. Now if we could zoom in on the top portion of that. This
9 again is a reconciliation from the bank, right?

10 A. Yes.

11 Q. It shows money going in and money going out, right?

12 A. Correct.

13 Q. I'm going to address your attention to certain portions.
14 If you look at July 31, 2007, do you see that?

15 A. Yes.

16 Q. Eric Buchwald gets \$4500, right?

17 A. Yes.

18 Q. I think you told us yesterday that Eric Buchwald was not on
19 salary. Was he?

20 A. He was in the beginning on salary for doing marketing.

21 Q. For doing marketing?

22 A. Yes.

23 Q. This is after the \$500,000 comes in?

24 A. Again, I'm not sure if it was a loan return or it was a
25 part of his salary in the beginning.

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Helfer - cross

1 Q. A loan return?

2 A. Yes.

3 Q. What loan did you have with respect to Eric Buchwald?

4 A. Before the new corporation put the money, David and Fotis,
5 they put some money, and we had to give it to them back.

6 Q. Before you meet David Levy and, we had this yesterday,
7 before you meet Mr. Georgiadis, you had raised capital, right?

8 A. From Dwight West.

9 Q. From Dwight West and from Mr. Buchwald?

10 A. Very little. Very little, yes.

11 Q. The money that Mr. Buchwald loaned to the company, was it a
12 loan or was it an investment?

13 A. It was a loan.

14 Q. The hundred that Eric Buchwald loaned, the company was the
15 old company, right, before David Levy comes on the scene,
16 right?

17 A. Correct.

18 Q. Did David Levy say that you could pay old debts with my
19 hundred?

20 A. Of course.

21 Q. The \$4500 that Eric Buchwald took out was for a repayment
22 of a loan?

23 A. Yes. Again, don't hold me to it, I don't really recall.

24 Either it was a salary, but it looks like it was a loan return.

25 Q. A salary in the round amount of \$4500?

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Helfer - cross

1 A. I can't recall. It's 2007.

2 Q. Dwight West, what was his job?

3 A. He did not have a job in the company.

4 Q. On July 31, 2007, the same day that Eric Buchwald gets his
5 money --

6 A. He got the same amount.

7 Q. He received money in the same amount, right?

8 A. Right.

9 Q. Further down, on August 7, 2007, you get a check for \$3965,
10 right?

11 A. Right.

12 Q. On the next page a company check -- by the way, speaking of
13 checks, did you ever write a check on the corporate account of
14 Cardiac Network to a California casino and the check bounced?

15 A. Me? No.

16 Q. Who? Who did that?

17 A. I never did.

18 Q. Do you have any knowledge -- excuse me, sir. Do you have
19 any knowledge as you sit here now of a check, a check from
20 Cardiac Network, being drawn to a California casino that
21 bounced?

22 A. No.

23 Q. You don't remember any such check?

24 A. I remember that one of the employees tried to cash his
25 check in a casino and it bounced. That I do remember. Who was

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Helper - cross

1 the employee, I don't recall. But I'm not a gambling person.

2 Q. It had nothing to do with gambling when on August 7, 2007,
3 you received \$3,965 out of the corporation, right?

4 A. Yes. Part of my payroll.

5 Q. Out of your payroll. That was your net amount?

6 A. That was the net amount.

7 Q. The gross amount was how much?

8 A. I don't recall.

9 Q. You don't recall what your salary was when you were at
10 Cardiac Network?

11 A. I don't recall the deductions, and so on.

12 Q. The next page, if you would go to the next page.

13 A. What number?

14 Q. The number is A48.

15 A. What page number?

16 Q. It's page number 2. You can see it right up there on the
17 screen.

18 A. What check are you referring to?

19 Q. I'm referring to August 17, 2007, a payment of \$1,727.17 to
20 Porsche.

21 A. Correct.

22 Q. You told us yesterday, in response to questions put by the
23 prosecutor, about your relationship with Mr. Georgiadis and
24 that you took over payments on his wife's car, correct?

25 A. The company did.

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Helfer - cross

1 Q. The company did?

2 A. Correct.

3 Q. Do you remember Mr. Georgiadis having a conversation with
4 you about Porsche and the checks that you were obligated to pay
5 through the company?

6 A. That the company will pay the car payment. It was very
7 clear.

8 Q. Are you finished?

9 A. Yes.

10 Q. Do you remember Mr. Georgiadis saying that you ruined his
11 credit because you didn't keep up with the payments?

12 A. Yes. And I told him because they did not come up with the
13 money, the company didn't have the money to pay.

14 Q. These checks are in 2007, right?

15 A. Right.

16 Q. All of the checks on this exhibit, right? Do you remember
17 when the first check to Porsche bounced? Do you remember that?

18 A. No.

19 Q. I think this question was put to you yesterday on direct
20 examination. I'm still with exhibit -- it was actually the
21 next page of Exhibit A48.

22 A. Page 3?

23 Q. Page 3, yes, the next page. This is at a time when, as we
24 saw from the exhibit yesterday, the company had no revenues.
25 Do you remember that? That was in the projection sheet. Sir,

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Helfer - cross

1 before you get to that exhibit, I want to ask you some
2 preliminary questions. Do you recall that we had an exhibit up
3 on the screen yesterday where there were projections that were
4 supplied to you by an individual and they were sent on to Mr.
5 Levy? It was only yesterday. Do you remember that?

6 A. I saw so many papers yesterday.

7 Q. Do you remember it said by 2010 the estimated income would
8 be \$14 million a year? Do you remember that?

9 A. Yes, something like that.

10 Q. Do you remember to the left of that entry it said that the
11 revenues for 2007 were zero, zero, zero and, as you pointed
12 out --

13 A. Yes, I do remember.

14 Q. Let me finish the question. The company hadn't gotten
15 started at that point, correct?

16 A. Correct.

17 Q. So with no revenue in 2007, in the summer of 2007, with no
18 revenue, could we look to August 24, 2011, you draw this what
19 you say is your salary, \$3,965.73. Do you see that?

20 A. Yes.

21 Q. Then going further down to August 28, 2007, Eli Gang, Dr.
22 Gang, he gets \$10,000, right?

23 A. Right.

24 Q. Dr. Gang wasn't on salary at that point, was he?

25 A. It was agreed upon us that all the principals that did not

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Helper - cross

1 get paid on the LLC corporation will be able to draw the salary
2 that was missing or was not paid to them before.

3 Q. Let me ask you this. You have seen all of the contracts,
4 the term sheets, the share-for-share agreements. Do you
5 remember those documents? You have seen all the contracts that
6 were executed in connection with this new corporation, the
7 public corporation, right?

8 A. Right.

9 Q. Can you, sir, as you sit here now, point or refer us or
10 refer the jury to any portion of any contract that has the
11 provision that Dr. Gang would get \$10,000 and that Mr. Buchwald
12 would get \$10,000? Do you have anything like that, sir?

13 MS. COHEN: Objection, your Honor.

14 THE COURT: Sustained.

15 Q. Is there any evidence that you have -- by the way, do you
16 have any papers in your possession from 2007?

17 A. No.

18 Q. When you were preparing for your testimony, you were
19 reviewing documents, right?

20 A. That was given to me by the prosecutor.

21 Q. By the prosecutors?

22 A. Right.

23 Q. In other words, documents, like we do here, to refresh your
24 recollection, right?

25 A. Correct.

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Helfer - cross

1 Q. And to see if your memory, even though it was 2007 and
2 later years, to see if your memory could be revived, things
3 that you forgot you may remember if you see something that jars
4 your memory, you understand that, right?

5 A. Absolutely.

6 Q. During the trial preparation, and there is nothing wrong
7 with pretrial preparation, but during the trial preparation you
8 had a chance, as the prosecutors were questioning you, to look
9 at documents, right?

10 A. Correct.

11 Q. Do you remember seeing as you prepared for your court
12 appearance, this court appearance now, do you remember seeing
13 on any of those occasions that you were being prepared by the
14 prosecutor a document that provided for money to Dr. Gang and
15 Eric Buchwald?

16 A. Number one, the oral agreement --

17 Q. Yes or no. That's a question that calls for --

18 MS. COHEN: Objection, your Honor.

19 THE COURT: You can't argue with the witness.

20 MR. SHARGEL: I'm not arguing.

21 THE COURT: It calls for a yes-or-no answer, Mr.
22 Helfer. Answer the question yes or no.

23 THE WITNESS: What is the question?

24 THE COURT: Do you recall seeing anything that
25 suggests that Dr. Gang should get \$10,000.

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Helfer - cross

1 A. No.

2 Q. What about Eric Buchwald?

3 A. No.

4 Q. You testified on direct examination -- by the way, do you
5 remember an individual by the name of Frank Liu?

6 A. I think it was a friend of David Levy from referring to the
7 same person.

8 Q. A friend of David Levy who invested \$350,000 in Cardiac
9 Network?

10 A. I don't know the amount. I know that he bought some
11 shares, but I don't know the amount.

12 Q. You don't remember the amount?

13 A. I don't remember the amount.

14 Q. It was a substantial amount of money, wasn't it?

15 A. I assume so, yes. We went to visit him in LA.

16 Q. That was more money that David Levy brought into the
17 company through a friend, correct?

18 A. Not to the company.

19 Q. Let me show you what's been marked for identification only
20 as 3516-6. You are free to look at any other part, but I
21 direct your attention to paragraph 5.

22 A. OK.

23 Q. May I have it for a moment. Do you remember having
24 meetings with Agent Reinhardt over here? You recognize him,
25 right?

D38rlev1

Helfer - cross

1 A. Sure.

2 Q. He was at some of those meetings taking notes? You saw him
3 taking notes, correct?

4 A. Sure.

5 Q. Having read this document, does it refresh your
6 recollection that Frank Liu, L-I-U, invested \$350,000 in
7 Cardiac Network? Does that refresh your recollection?

8 A. Yes.

9 Q. In fact you told Agent Reinhardt, he didn't tell you, that
10 this -- let me finish the question -- that this \$350,000
11 investment in Cardiac Network had been made by Frank Liu,
12 right?

13 A. The way I said it was he did put a substantial amount of
14 money, and I think it was 350. You just mentioned a different
15 amount.

16 Q. You think it was \$350,000, right?

17 A. At the time I thought so, yes.

18 Q. You said yesterday that you were not really familiar with
19 the workings of a public company, correct?

20 A. Correct.

21 Q. But you would write back and forth with the transfer agent
22 and give the transfer agent directions, right?

23 A. No.

24 Q. You never did that?

25 A. When I was asked by David Levy or by Fotis Georgiadis to

D38rlev1

Helfer - cross

1 send some paperwork to Amy from the transfer agent, I did so.

2 Q. In other words, you were just following their directions,
3 right?

4 A. Correct.

5 Q. There was never a situation where you would do that on your
6 own, correct?

7 A. It was one time that I wanted -- I cannot say one time, but
8 at least one time that I can recall that I wanted her to
9 unrestrict my -- our shares.

10 Q. You wanted to get your shares unrestricted, which would
11 enable you to sell, right?

12 A. Correct.

13 Q. You knew that David Levy -- I think you said this yesterday
14 but I want to make sure. You knew that David Levy had
15 unrestricted shares of Cardiac stock, right?

16 A. Never knew it.

17 Q. You never knew it?

18 A. We found out later, towards 2008.

19 Q. That's the first time that you --

20 A. Correct.

21 Q. -- knew it. Do you remember meeting with representatives
22 from FINRA, or actually NASD back in August of 2007?

23 A. I remember a phonecall, but I didn't know exactly who it
24 is.

25 Q. Do you remember having a conversation with someone from

D38rlev1

Helfer - cross

1 NASD?

2 A. I vaguely remember being questioned by somebody.

3 Q. I'm sorry. Did you finish your answer?

4 A. By somebody, yes. I don't recall the name.

5 Q. Someone from an enforcement authority, right?

6 A. It sounded like it, yes.

7 Q. You were asked questions and gave answers, right?

8 A. Correct.

9 Q. Then there came a time when you said you wanted to have
10 your lawyer present?

11 MS. COHEN: Objection, your Honor.

12 THE COURT: Sustained.

13 Q. Do you remember asking that Laura Anthony, who yesterday
14 you described as Mr. Levy's lawyer, do you remember that Laura
15 Anthony was on the telephone conversation the next day?

16 MS. COHEN: Objection, your Honor.

17 THE COURT: Overruled.

18 A. I remember talking to her after this phonecall, yes.

19 Q. I'm asking you whether you recall a phonecall where not
20 only Laura Anthony was on the phone as your lawyer but the
21 conversation with the men from NASD was part of a conference
22 call and you were on. You don't remember that?

23 A. It never happened.

24 Q. Never happened?

25 A. It never happened.

D38rlev1

Helper - cross

1 Q. Let me show you what's been marked as Defense Exhibit A168
2 for identification. If you read the first couple of paragraphs
3 to yourself, I'll put a question.

4 A. OK.

5 Q. Having read that, does that refresh your recollection that
6 you had a conversation about Cardiac Networks with
7 representatives from NASD when your lawyer was on the phone as
8 well?

9 A. No.

10 Q. You don't recall that at all?

11 A. No, I don't.

12 Q. Do you recall Laura Anthony telling anyone in your presence
13 that there were 44 million 300 -- you have the paper. May I
14 have it a moment -- 4,318,000 shares of Cardiac Network
15 belonged to Mr. Levy and they were free trading Date Palm
16 Capital, his company, and that they were freely tradeable
17 shares of Cardiac Network?

18 A. This is more or less when we found out that their shares
19 were not restricted. It was towards the end of 2007. However,
20 the agreement that we signed in the beginning, our
21 understanding was that a hundred percent of the shares were
22 restricted.

23 Q. Was it an agreement or was it the papers that you signed?

24 A. It was an agreement.

25 Q. Outside the papers that you signed?

D38rlev1

Helfer - cross

1 A. Yes, it was an agreement. We were assured that a hundred
2 percent of the shares will be restricted.

3 Q. Was that an agreement or was this in writing?

4 A. I don't recall.

5 Q. You don't recall that?

6 A. No.

7 Q. Do you remember a Dr. Reinberg? Does that sound familiar
8 to you?

9 A. Dr. Reinberg?

10 Q. Reinberg, yes.

11 A. Which one?

12 Q. Marvin Reinberg.

13 A. Yes, I do.

14 Q. Do you remember that he made a contribution also, an
15 investment?

16 A. No.

17 Q. You don't remember that a doctor investing \$300,000?

18 A. No.

19 MR. SHARGEL: May we have Government Exhibit 250-16.
20 I believe this is in evidence. I don't think I have to move
21 this, is that correct, Ms. Cohen?

22 MS. COHEN: That's correct.

23 MR. SHARGEL: Thank you. 250.16.

24 THE COURT: What is that, Mr. Shargel?

25 MR. SHARGEL: What is it?

D38rlev1

Helfer - cross

1 THE COURT: Yes, what is it?

2 MR. SHARGEL: It is an exhibit.

3 THE COURT: It's in evidence. Tell me what it is. Is
4 it the share-for-share agreement?

5 MR. SHARGEL: No, it is not the share-for-share
6 agreement. This is something new, your Honor.

7 THE COURT: OK, I'll wait.

8 Q. This is a letter from a law firm. 250-16. The Bates stamp
9 number is very, very small, but it's 3945 at the bottom right,
10 four pages in. Again, this is in evidence. I just wanted to
11 read a couple of portions. We could read the whole thing at a
12 later time. "Please be advised that Cardiac has placed" --
13 this is, by the way, written to you, right? Is that your
14 address? I'm not going to try to pronounce that, but is that
15 your address in Boca Raton?

16 A. Yes.

17 Q. Do you remember receiving this letter?

18 A. No.

19 Q. This is in 2009. This is now July 7, 2009. Is that too
20 far back for you to remember?

21 THE COURT: The objection is sustained.

22 Q. Let me ask you if you remember this. This is in evidence.
23 "Please be advised that Cardiac has placed an administrative
24 hold on the 33 million shares with the company's transfer
25 agent, preventing their further transfer. Please also be

D38rlev1

Helfer - cross

1 reminded that you filed a sworn affidavit, swearing that the
2 shares that you are now trying to deposit into a brokerage
3 account were lost or stolen."

4 Do you remember receiving such a letter?

5 A. I never seen this letter in my life.

6 Q. Are you familiar with this Labertew & Associates law firm?

7 A. Never seen this name. And there is something else. It
8 says Michelle. That used to be my secretary. She was not
9 there in 2009.

10 Q. She wasn't there in 2009?

11 A. No. She left at the end of 2007, the beginning of 2008.

12 Q. Where are you getting the name?

13 A. Where it says on the top, the email, "Michelle@."

14 Q. No, I respectfully suggest that says "Michael."

15 A. OK. I didn't see it.

16 Q. You have the monitor in front of you?

17 THE COURT: It's not on his monitor. It's not on my
18 monitor.

19 A. It is here, but I didn't see it.

20 Q. Hold on. You could read that one. Sir, does that refresh
21 your recollection that you --

22 A. I never seen this letter in my life.

23 MR. SHARGEL: Could I have 94A, please.

24 Q. You were asked about conversations that you had with
25 Michael Swartzburg. Do you remember that?

D38rlev1

Helfer - cross

1 A. Yes.

2 Q. There came a time that you were writing to Amy at Standard
3 Registrar and Transfer, the transfer agent, right? Do you
4 remember that?

5 A. Yes.

6 Q. I'd asked you questions earlier about whether you gave her
7 directions, right?

8 A. Yes.

9 Q. You said that was largely at the suggestion of Mr.
10 Georgiadis and Mr. Levy, right?

11 A. Correct.

12 Q. Do you remember writing a letter to Amy at Standard
13 Registrar and Transfer in February of 2010, just two years or
14 so ago, three years?

15 A. Can you read it to me?

16 MR. SHARGEL: No. I offer it into evidence. Well, I
17 first have to get a little more foundation.

18 Q. Do you recognize what has been marked for identification as
19 A94?

20 A. Yes, I remember it very clearly.

21 Q. You remember very clearly that you wrote a letter to -- may
22 I have it?

23 A. Sure.

24 Q. Your signature is on the letter?

25 A. Yes.

D38rlev1

Helfer - cross

1 Q. You remember this event?

2 A. Yes.

3 MR. SHARGEL: I offer A94 in evidence.

4 MS. COHEN: Your Honor, I'm waiting to see a copy.

5 THE COURT: A94 is received in evidence.

6 (Defendant's Exhibit A94 received in evidence)

7 THE COURT: Go ahead.

8 MR. SHARGEL: If you could blow that up a little bit.

9 Q. You're writing now on February 11th, or it was received on
10 February 11th in all events, and asked this woman Amy to please
11 find attachment 1682 for 13,975,000 shares of the common stock
12 of Cardiac Network. By the way, before we get to the next
13 sentence, where were you in February 2010? Are you still the
14 worldwide sales representative for the company?

15 A. No.

16 Q. You are completely out of the company, right?

17 A. Completely out of the company.

18 Q. Your signature is on the bottom. You go on to say, "Kindly
19 transfer 6,987,500 of these shares to Eric Buchwald, who
20 resides in Boynton Beach, Florida," correct?

21 A. Right.

22 Q. Then you say, "Please also prepare a new certificate in my
23 name for the balance of" the same amount of shares, 6,987,000,
24 right?

25 A. Correct.

D38rlev1

Helfer - cross

1 Q. Do you remember, sir, needing to fill out a questionnaire
2 for the transfer that you just asked for in that letter?

3 A. I don't remember the exact piece of paper, but I believe I
4 did.

5 Q. Let me show you what's been marked for identification as
6 A94A. I ask you if you recognize that.

7 A. I don't recognize it.

8 Q. Your name is on it, isn't it?

9 A. Yes, but it's not my handwriting.

10 Q. Is it Eric Buchwald's handwriting?

11 A. No. I don't know.

12 Q. Eric Buchwald you described on direct examination as your
13 very close friend, right?

14 A. Right.

15 Q. Are you able, sir, to recognize -- how many years were you
16 friends?

17 A. Many years.

18 Q. When you say many, give us an idea. Decades?

19 A. 30 years.

20 Q. That's decades. So for decades you knew Mr. Buchwald.
21 Have you seen documents that Mr. Buchwald signed?

22 A. Yes, but very few, very little.

23 Q. Have you seen letters, correspondence that you may have had
24 with Mr. Buchwald over the 30 years?

25 A. On the Internet.

D38rlev1

Helper - cross

1 Q. So you don't recognize his handwriting?

2 A. No, I don't.

3 Q. Let me show you what's been marked for identification as
4 94B, A94B, as in boy. I ask you if you recognize that
5 document.

6 A. I see the document, but I don't recognize the handwriting.
7 It's not mine.

8 Q. So I won't offer it. Let me ask you a question. You were
9 asked questions yesterday about Mr. Swartzburg, who replaced
10 you as the CEO and the president. By whatever title, he was
11 the man in charge after you, right?

12 A. Yes.

13 Q. Do you remember that Mr. Swartzburg wrote a letter to --
14 withdrawn. We are not going to talk about the letter. Do you
15 remember having any conversations with Mr. Swartzburg? You
16 were asked about that yesterday. You said you had some
17 conversation.

18 A. Yes. At a certain point we wanted to buy the company. I
19 called David Levy and I told him that we found an investor and
20 want to take the company over. He said OK, talk to Michael
21 Swartzburg and he will give you the papers, which he never did.
22 I wanted specifically to know if the Medicare provider number
23 was still in effect.

24 Q. Did Mr. Swartzburg in any of those conversations, in any of
25 those conversations after he left the company, say to you, Mr.

D38rlev1

Helfer - cross

1 Helfer or Zev or whatever he called you, did he say to you that
2 you lied on those applications to have that stock transferred?

3 A. No.

4 Q. Do you remember him saying that to you?

5 A. He never did.

6 Q. He never accused you of that?

7 A. No.

8 Q. I want to ask you about one other point and then I'll sit
9 down. The point is this. When you first had a meeting, when
10 you first had a meeting at Mr. and Mrs. Levy's house in Fort
11 Lauderdale, Florida -- you remember the meeting, right?

12 A. Yes.

13 Q. Do you have a good recollection, a firm recollection of
14 what occurred at the meeting?

15 A. More or less, yes.

16 Q. Obviously, the discussion was about the investment
17 opportunity?

18 A. Yes. We were very happy that we will be able to get the
19 money and not close the company, the LLC.

20 Q. Everyone was happy, right?

21 A. We were happy at the time.

22 Q. You brought a sample of the device, you brought that with
23 you, right?

24 A. Correct.

25 Q. You talked about its virtues and you talked about Dr. Gang,

D38rlev1

Helper - cross

1 right?

2 A. Correct.

3 Q. Isn't it a fact, sir, that at that meeting at the Levys'
4 home, when David Levy said to you how much money do you need to
5 have invested in the company --

6 A. I said 400,000.

7 Q. 400,000?

8 A. Yes.

9 Q. And he gave you a million 2, right?

10 A. Absolutely.

11 Q. He brought friends and other people around to invest in the
12 company as well?

13 A. As far as I know, the million 2 came from him and from
14 Fotis Georgiadis.

15 Q. On top of the million 2, you had \$350,000 from Mr. Liu,
16 right?

17 A. No, absolutely not.

18 Q. You didn't have that?

19 A. Absolutely not. The only amount of moneys that Cardiac
20 Network received, it was a million 2, nothing else.

21 MR. SHARGEL: I just have one more question.

22 THE COURT: You mean one more subject area?

23 MR. SHARGEL: One more subject area. This is the
24 last, the absolute last. May I stay here for a moment?

25 Q. We raised the issue, the issue has been raised, about the

D38rlev1

Helfer - cross

1 shares that Mr. Levy and -- I'll just talk about Mr. Levy --
2 that Mr. Levy held. You said you only learned in 2008 that the
3 shares were unrestricted, right?

4 A. The end of 2007, the beginning of 2008.

5 Q. Do you remember when you were speaking to the prosecutors
6 on October 25, 2011, saying that you believe that the shares
7 given to David Levy and Fotis Georgiadis were not restricted?
8 Yes or no.

9 A. Yes.

10 MR. SHARGEL: No further questions.

11 A. No, I'm sorry. Can you rephrase the question? It went
12 above my head. I'm sorry. What I said, and I will repeat --

13 Q. There is no question before you.

14 A. OK, go ahead.

15 MS. COHEN: Your Honor.

16 THE COURT: Do you want to rephrase the question or do
17 you want the court reporter read the question back?

18 MR. SHARGEL: I'm happy to have the court reporter
19 read the question back.

20 (Question read as follows: Do you remember when you
21 were speaking to the prosecutors on October 25, 2011, saying
22 that you believe that the shares given to David Levy and Fotis
23 Georgiadis were not restricted? Yes or no.)

24 A. Yes, they were. We knew that they were restricted, and
25 towards the end of the year we found out -- at the end of 2007,

D38rlev1

Helfer - cross

1 the beginning of 2008, we found out that they are not.

2 Q. You didn't say a word in that conversation on October 25,
3 2011, when you were meeting with the prosecutors and you were
4 meeting with Agent Reinhardt, you didn't say a word about not
5 finding out until the end of 2007 and 2008, did you?

6 A. But this is a fact that that's when we found out.

7 MR. SHARGEL: I have no further questions. I'm just
8 going to collect these documents.

9 (Continued on next page)

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D38rlev1

Helfer - cross

1 THE COURT: Mr. Srebnick.

2 Thank you, Mr. Shargel.

3 MR. SHARGEL: Thank you, Judge.

4 CROSS-EXAMINATION

5 BY MR. SREBNICK:

6 MR. SREBNICK: May it please the Court, good morning
7 everyone or good afternoon at this point.

8 Q. Mr. Helfer, my name is Howard Srebnick. We're never spoken
9 before, have we?

10 A. No.

11 Q. I have some questions I'd like to ask you. I represent
12 Donna Michelle Levy, and I'd like to ask you some questions
13 about your relationship to Donna Michelle Levy during the
14 course of your working for Cardiac Network.

15 Do you recall meeting Donna Michelle Levy sometime
16 late '06, early '07?

17 A. Yes.

18 Q. And do you recall at the time you held yourself out to be a
19 person affiliated with a company and a product that had great
20 potential?

21 A. Yes.

22 Q. You were optimistic about the potential of the product that
23 you were attempting to market?

24 A. Still, still very optimistic about it.

25 Q. It was a product, however, for which you and your company

D38LLEV2

Helper - cross

1 did not have a patent, correct?

2 A. Correct.

3 Q. It was a product really that your company was going to be
4 marketing, but you did not have the exclusive in terms of
5 selling the product; is that correct?

6 A. Correct.

7 Q. And so the nature of the business of what we now know to be
8 Cardiac Network was selling a product that could help perhaps
9 millions of Americans who suffer from heart disease, correct?

10 A. You can say so, but the millions is a little...

11 Q. Speaking of millions, when you presented this business
12 opportunity to the Levys, you spoke in terms of millions, in
13 fact, millions of dollars of revenue, correct?

14 A. No.

15 Q. Do you recall preparing projections as the jury has already
16 seen projecting that this product and the company that you were
17 asking them to invest in could generate millions of dollars of
18 revenue?

19 A. This business plan was created by Mr. Levy and his people.

20 Q. Who was it that created that plan?

21 A. Mr. Levy.

22 Q. Let me ask you to take a look at Defense Exhibit A3.

23 MR. SREBNICK: Can we put that on the screen? I think
24 it's in evidence already. Can we enlarge the -- yes, please.

25 Q. Do you recall yesterday there was a discussion about an

D38LLEV2

Helfer - cross

1 email from Zev Helfer to David Levy which you had forwarded to
2 David, having received it from your colleague and friend Eric
3 Buchwald; do you see that?

4 A. I see.

5 Q. And so that we're all clear, the bottom half of that email
6 chain shows that on April 11 of '07, there were projections --
7 that's the subject matter -- sent from Buchwald to
8 Zev@CardiacNetworkLLC.com, which Zev Helfer then forwarded to
9 David Levy, correct?

10 A. Correct.

11 MR. SREBNICK: If we could turn the page and if we
12 could go to the top of the next page. Before we get to
13 projections I just want to -- now, if we can enlarge the top
14 half so we can all see it.

15 Q. Do you see that it's captioned projections?

16 A. Yes.

17 Q. And it's addressed to Eric Buchwald, your colleague?

18 A. Yes.

19 Q. From a John Abitante; do you see that?

20 A. Yeah, but I don't know who he is.

21 Q. And it says, Eric, I'm attaching the adjusted projections
22 and corrected all referencing errors as discussed. I also
23 changed the years from 2005 to 2007 for obvious reasons, etc.
24 Respectfully, John Abitante, managing partner of a firm of CPAs
25 Ribotsky, Levine, and Co.

D38LLEV2

Helper - cross

1 Do you see that?

2 A. Yeah.

3 Q. If we can turn the page, there's a table of contents that
4 this CPA firm has prepared, Cardiac Network Inc. financial
5 summary, and it provides, as we will see if we turn to the next
6 page, projections. Correct?

7 A. Cardiac Network Inc. was not in existence in these days.

8 Q. These are projections, correct?

9 A. It was Cardiac Network LLC.

10 Q. I understand. The whole point --

11 A. Cardiac Network Inc. was done by David Levy and his people.

12 Q. Let's take a look at the projections that Eric Buchwald
13 forwarded to you, then you forwarded it to David, as we've seen
14 from the email.

15 A. I'm not sure because it's two separate companies.

16 Q. Let's take a look at the projections.

17 MR. SREBNICK: If we can go to the top left, there we
18 go. If we can enlarge that. Thank you.

19 Q. And the CPA firm that forwarded it to Eric, Eric to you,
20 and you to David was projecting, in the top line, revenues in
21 year 2008 going from \$0, if we could just point to it -- and
22 may I borrow the pointer.

23 This is 2007. And of course in 2007 the company had
24 zero revenues. And do you see projections for 2008 of a
25 million eight. If we look to the right, for 2009, 11 million

D38LLEV2

Helper - cross

1 plus. For 2010, 44 million plus.

2 A. I see that.

3 MR. SREBNICK: If we could turn the page, Jen, to
4 page 6, and if we can enlarge that chart on page 6.

5 Q. And the projections that were forwarded to David Levy with
6 a five-year income forecast by this certified public accounting
7 firm projecting over five years close to a hundred million
8 dollars of revenue, correct?

9 A. Correct, but I still have a issue here.

10 Q. Did Eric Buchwald forward it to you?

11 A. According to this yes, but.

12 Q. Did you forward --

13 A. It's a little, it's a little doesn't make sense.

14 Q. Did you tell that to David Levy, that the projections that
15 you were forwarding to him don't make sense?

16 A. I really think that this was done by David Levy and his
17 people. This was Cardiac Network Inc. It's not Cardiac
18 Network LLC. It's a different timetable.

19 Q. April 2007 is when the email is prepared forecasting,
20 projecting what the potential revenues would be. You
21 forward --

22 A. -- understand what I'm saying.

23 Q. Did you not forward it to David Levy, yes or no?

24 A. Yes, I did.

25 Q. In the email you forwarded to David Levy, was there

D38LLEV2

Helfer - cross

1 anything statement in the email, dear David, I think these
2 projections are too optimistic?

3 A. I didn't read it so I don't know.

4 MR. SREBNICK: If we can go back to page 2, which is
5 the cover letter email with Mr. Abitante's CPA firm, it's
6 page 2 of the exhibit.

7 Q. Do you remember that I read to you, I am attaching the
8 adjusted projections and corrected all referencing errors as
9 discussed. I also changed the years from 2005 to 2007 for
10 obvious reasons.

11 Wasn't Mr. Abitante's firm, the CPA firm, affiliated
12 either with you or Mr. Buchwald long before you all met the
13 Levys?

14 A. I never met, I never spoke to Mr. John Abitante. I don't
15 know who he is. It looks like he's working for Mr. Levine and
16 Ribotsky, but I really don't know.

17 Q. Do you know why he was sending it to your partner Eric
18 Buchwald?

19 A. According to what it states here that he was making some
20 adjustment to existing business plan.

21 Q. In all events when you met with Donna Levy in 2007, is it
22 fair to say you expressed great optimism for your product and
23 for the company?

24 A. Yes.

25 Q. And when I discuss millions of dollars of revenue, indeed,

D38LLEV2

Helper - cross

1 you were obtaining million -- over a million dollars in
2 investment from the Levy group, would it be fair to assume they
3 were expecting well in excess of a million dollars in revenue
4 from this company?

5 A. I believe so, yes.

6 Q. And did you not then express to them why the product could
7 be successful, did you tell them that it could be successful
8 because there were millions of Americans who suffer from heart
9 issues who were potential customers?

10 A. Yes.

11 Q. And did you tell them then that if you were successful in
12 marketing the product, this company over the long term could
13 generate millions of dollars a year in revenue?

14 A. Yes.

15 Q. Now, working with you at Cardiac Network you had an
16 assistant by the name of Michelle?

17 A. Correct.

18 Q. Would that be Michelle Dela Fuente?

19 A. Correct.

20 Q. For how long did Michelle Dela Fuente work for you?

21 A. I will say a year.

22 Q. A year?

23 A. Just about.

24 Q. Would that have been 2006 through 2007, more or less?

25 A. 2007, the beginning of 2006 through 2008, the beginning of

D38LLEV2

Helper - cross

1 2008, I think.

2 Q. Was she your office manager?

3 A. Yes.

4 Q. Was she somebody who would forward emails to you that came
5 to the company?

6 A. Only when -- I was a lot on the road and only when it was
7 some kind of an emergency she will do that. Otherwise, when I
8 came back to the office I will look at it.

9 Q. So you would look at the emails yourself, correct?

10 A. Correct.

11 Q. Now, you saw the exhibit earlier B1. In 2007, Donna Levy
12 through her company, DML Marketing, provided funding for
13 Cardiac, correct?

14 A. The whole group, Fotis Georgiadis and the Levys all group
15 provided funding. And I did not look who exactly sent the
16 money as long as the money came to the company. That was my
17 concern.

18 Q. Isn't it important to know who's lending money to the
19 company, particularly when the check makes quite clear that
20 this is a loan, bottom of the check?

21 A. I see that.

22 Q. Was that loan ever paid back to Donna M. Levy or DML
23 Marketing corporation?

24 A. No, because we never received the money that we had an
25 agreement.

D38LLEV2

Helper - cross

1 Q. You saw the wire transfer that DML Marketing transferred to
2 Cardiac. It was in the bank statement. I believe that's B2,
3 bravo two.

4 Was DML Marketing ever paid back for that \$30,000 wire
5 transfer that it sent to Cardiac Network?

6 A. No, it was a part of the million two.

7 Q. How do you know that if you weren't -- you had no
8 recollection yesterday of ever hearing the name DML Marketing.
9 Today you're telling us it's part of the million two?

10 A. No. You're twisting my words. I said I didn't know and
11 please give me a name and when your colleague gave me the name,
12 I identify that it was Donna. Now, Donna belongs -- I don't
13 control who gives the money, if it's Donna or David. To us it
14 was Fotis, David, and Donna.

15 Q. When this wire transfer for \$30,000 came in from DML
16 Marketing Corp., did you make a record in the books of Cardiac
17 Network that DML Marketing had provided this money to your
18 company?

19 A. No. The group of the investors gave us the money. This
20 was not any above and beyond the million two. This was a part
21 of the million two.

22 Q. And how do you know that today if you don't even remember
23 the name DML Marketing?

24 A. It's not relevant.

25 Q. I'm sorry?

D38LLEV2

Helper - cross

1 A. I don't think that it's relevant. It was a group of
2 investors and they from different kind of sources send us
3 money, part in checks, part in wire transfer, and part was
4 evidently like you see here from Donna. But it all fell into
5 the million two.

6 Q. I'd like to ask you some questions now about the public
7 relations campaign, the press releases that you discussed
8 yesterday.

9 Now, isn't it a fair statement that with regard to the
10 press releases that were being issued to the public, Donna Levy
11 would send a copy by email to you for you to review before it
12 was released publicly?

13 A. Yes.

14 Q. And those press releases would be sent to you at your email
15 address for you to review, edit, make any changes, suggestions,
16 etc.; correct?

17 A. Not in all times it was done.

18 Q. Is it fair that Donna Levy sent to you advance copies of
19 proposed press releases so that you would have an opportunity
20 to comment, review, edit, whether you did it or not, an
21 opportunity was given to you and indeed others to make comments
22 about the proposed press releases, yes?

23 A. We made our changes, yes. The answer is yes. We made our
24 changes. However, sometimes those changes never materialized.

25 Q. Sometimes --

D38LLEV2

Helper - cross

1 A. It was still advertised as we did not make any changes.

2 Q. Now, there were other individuals that were within the
3 loop, within the circle of individuals involved in the press
4 releases?

5 A. Correct.

6 Q. That would include on occasion your assistant, Michelle
7 DeLa Fuente, she was included on some of the exchanges,
8 correct?

9 A. She did not have the authority to do that.

10 Q. But she would receive copies in advance at times, right?

11 THE COURT: He shook his head yes.

12 A. Yes.

13 Q. Do you remember a company from Toronto, Canada, called
14 Agoracom?

15 A. I remember Agoracom, yes.

16 Q. Do you remember a Mr. George T-S-I-L-O-S-I-S?

17 A. No.

18 Q. Tsilosis?

19 A. No. I remember a name a gentleman by the name Jim.

20 Q. Do you remember Jim Haron, H-A-R-O-N, from that company?

21 A. I think that was his last name. But I don't remember the
22 first name.

23 Q. Do you remember another person from Agoracom named Carrie?

24 A. No.

25 Q. Do you remember another individual involved in the press

D38LLEV2

Helper - cross

1 releases and press campaign, Jarret Wollstein?

2 A. I saw a press release when I was talking to the prosecutors
3 but I never knew that it went out.

4 Q. Did you ever meet Jarret Wollstein in person?

5 A. One time.

6 Q. I'd like to now go through some of those press releases
7 with you.

8 MR. SREBNICK: If we could publish Government
9 Exhibit 101-8. 101-8, is there anybody who can publish it? If
10 not, I'll put it on the Elmo. And if we can enlarge it, widen
11 it perhaps.

12 THE COURT: It's on your screen.

13 THE WITNESS: I barely can see it.

14 THE COURT: Do you have a hard copy?

15 MR. SREBNICK: I think it's in the binder, but I'd
16 have to approach the witness.

17 THE COURT: Approach the witness. He can't see it on
18 the screen. He cannot see it on the screen. He wants a hard
19 had copy.

20 MR. SREBNICK: Understood.

21 Q. 101-8.

22 A. I see it.

23 Q. Very good. Now, do you see that this press release was
24 published May 31, 2007? I'm going to point to it on the
25 screen. It may help you find it.

D38LLEV2

Helper - cross

1 A. I do, I do.

2 Q. And here's what it announces.

3 MR. SREBNICK: May I publish it, Judge?

4 THE COURT: It is published. You want to read from
5 it?

6 MR. SREBNICK: Yes, please.

7 THE COURT: Go ahead.

8 Q. Cardiac Network Inc. announced that the company's shares
9 will begin trading on the OTC Pink Sheets under its new trading
10 symbol CNWI. And then it provides a few paragraphs about the
11 company, the product.

12 And I'd like to take a look at the approximately the
13 fourth paragraph where it says cardiovascular disease and
14 coronary heart disease are widespread, afflicting over
15 70 million people. Heart attacks are the single biggest killer
16 in the United States alone. Each year, about 1.1 million
17 Americans suffer a heart attack. About 460,000 of those heart
18 attacks are fatal. Those figures would change if those people
19 got to a hospital as fast as possible when a heart attack
20 happened.

21 Do you see that?

22 A. Yes.

23 Q. Now, I'd like to have you take a look at what is marked as
24 Defense Exhibit B9.

25 MR. SREBNICK: And I would move it into evidence

D38LLEV2

Helfer - cross

1 without objection. It's an email, Judge, and if we can ask the
2 Court to receive it, B9.

3 THE COURT: Any objection?

4 MS. COHEN: No, your Honor.

5 THE COURT: B9 is in evidence.

6 (Defendant's Exhibit B9 received in evidence)

7 MR. SREBNICK: And if we could publish?

8 THE COURT: Yes.

9 Q. Now, do you see that on the screen? You don't have it on
10 the screen, Mr. Helfer?

11 THE COURT: He does have it on the screen.

12 MR. SREBNICK: OK, great.

13 Q. Do you see that is an email dated May 9, 2007, about two
14 weeks before the press release that you just saw. There's an
15 email to you from the email address luvmee40@aol, and you know
16 that to be Donna Levy's email address?

17 A. Yes.

18 Q. Directed to Zev@CardiacNetwork.net, do you see that?

19 A. Yes.

20 Q. As well as to Georgiadisgroup@AOL, as well as
21 David@DatePalmCapital.com; do you see the address lines?

22 A. Yes.

23 Q. And do you see the subject, quote, I hope the final one
24 ready to go. Let me know.

25 Do you see that?

D38LLEV2

Helfer - cross

1 A. Yes.

2 Q. And if we look at the content of the email, what's embedded
3 in the email, is it fair to say that three weeks before the
4 email -- excuse me -- three weeks before the press release is
5 published that we just saw as Government Exhibit 101-8, there's
6 a draft of the email contains a draft of the press release; do
7 you see that?

8 A. I see here.

9 Q. And if we look at the fourth line, again, it refers to
10 cardiovascular disease and coronary heart disease being
11 widespread, affecting over 70 million people, single biggest
12 killer, 1.1 million Americans, 460,000 fatal heart attacks; do
13 you see that reference in the paragraph?

14 A. Yes.

15 Q. Now, do you have any experience in press releases and how
16 they are prepared prior to your relationship with the Levys?

17 A. No.

18 Q. The way these press releases worked, the Levys, excuse me,
19 Donna Levy would arrange with perhaps Agoracom or others to
20 have drafts of the press releases prepared, proposed, perhaps
21 edited, and then released; wasn't that the sequence of events?

22 A. Should be.

23 Q. OK. And there would be proposed statements on behalf of
24 Zev Helfer, the CEO, to release to the press, right?

25 A. OK.

D38LLEV2

Helfer - cross

1 Q. In this one at the bottom it was proposed that you be
2 quoted, right at the bottom, We are extremely excited to offer
3 Cardiac Network Inc. publicly. For the next 20 years, the U.S.
4 healthcare system could experience a tsunami of heart care, a
5 tsunami of heart care demand as millions of baby boomers turn
6 60. We believe we are positioned to meet these demands.
7 Expect great things to come from Cardiac Networks in 2007 and
8 beyond, states Zev Helfer, CEO of Cardiac Network Inc.

9 You see it there?

10 A. I see it.

11 Q. Now, the choice of words "tsunami" may not have been yours
12 originally, correct?

13 A. You can hear my language and this is -- I wish I could
14 speak like this. My English is not on this level
15 unfortunately.

16 Q. So the professionals put together proposed sound bite for
17 you to consider and adopt as your own, even if it would not
18 have been your choice of words, perhaps because the word
19 tsunami was a new word for you or not a word you would have
20 chosen, right?

21 A. Fair to say, yes.

22 Q. And so that email containing the tsunami quote -- we'll
23 call it that for ease of reference -- do you see it in what I'm
24 now going to show you as B5?

25 MR. SREBNICK: Which we move into evidence without

D38LLEV2

Helfer - cross

1 objection, your Honor, another email dated May 22, 2007.

2 THE COURT: Is that correct, Ms. Cohen, you have no
3 objection?

4 MS. COHEN: Yes, your Honor.

5 THE COURT: B5 is in evidence then.

6 (Defendant's Exhibit B5 received in evidence)

7 MR. SREBNICK: If we could publish that.

8 Q. Do you see that in the evolution of a press release in May
9 of 2007, if we go to the top, about 13 days after the May 9
10 email, there is another draft of the proposed press release and
11 if we look to the bottom of the page -- thank you, Ms. Hays --
12 once again there is the what I'm going to call a sound bite or
13 a quote attributed to Zev Helfer and it contains the tsunami of
14 heart care demand, right, that stayed in the proposed press
15 release, right?

16 A. Yes.

17 Q. Now, I'd like to turn your attention to bravo 13.

18 MR. SREBNICK: Which I would move into evidence at
19 this time, B13.

20 MS. COHEN: No objection, your Honor.

21 THE COURT: B13 is in evidence.

22 (Defendant's Exhibit B13 received in evidence)

23 Q. This is an email dated May 25, 2007. So this is three days
24 later. This is now the third email that we're looking at in
25 preparation of a proposed press release for the company.

D38LLEV2

Helper - cross

1 It appears that EP Gang -- would that be Dr. Eli
2 Gang's address?

3 A. Yes.

4 Q. Is sending to you, at Zev@CardiacNetwork.net, an email
5 saying, Zev, I made some changes in the text. See attached.
6 Eli or Eli, is it Eli?

7 A. Either way.

8 Q. And then you forwarded the email to
9 DavidLevy@DatePalmCapital, right?

10 A. I just see the top, yeah, yes.

11 Q. It appears that it was sent at 10:54 to you and then a few
12 hours later you forwarded it to David Levy?

13 A. Yes.

14 Q. May I approach the witness with a hard copy or can you see
15 that OK?

16 A. Please.

17 MR. SREBNICK: May I, judge?

18 THE COURT: Sure.

19 THE WITNESS: Thanks a lot.

20 Q. Now if we turn the page on the email, this is the proposed
21 edits, perhaps, of Dr. Eli Gang; do you see that one paragraph?

22 A. Yes.

23 Q. And so that those that are not familiar with how these
24 editing programs work, it appears that Eli Gang was proposing
25 that the first half of the paragraph be substituted by the

D38LLEV2

Helfer - cross

1 second half of the paragraph. He liked a different choice of
2 words in that press release.

3 MS. COHEN: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Do you see the words underlined, quote, the heart line
6 provides the patient and his physician rapid access to a state
7 of the art transtelephonic EKG tracing that, when properly
8 utilized, might alert the patient to seek quick treatment for a
9 potentially life threatening cardiac event; do you see that
10 language?

11 THE COURT: That's what it says.

12 Q. Is that the language that Dr. Gang --

13 THE COURT: That's the question. Is that the language
14 that Dr. Gang proposed?

15 THE WITNESS: Yes.

16 THE COURT: OK.

17 Q. And that language was meant, according to the email, to
18 substitute for the first four lines that have strike through,
19 lines drawn through them?

20 A. I think so.

21 MS. COHEN: Objection, your Honor.

22 THE COURT: Sustained. Strike the answer.

23 Q. Now, if we can go then to the next Exhibit B4, that would
24 be an email Wednesday, May 30, 2007, at 3:34 p.m., and it's
25 titled from Donna Levy email address to Zev Helfer's address.

D38LLEV2

Helfer - cross

1 Subject, here is the final release approved by all.

2 Do you see that?

3 A. Yeah, I do, but I prefer to get the hard copy if you don't
4 mind. Sorry. It's the age.

5 Q. And if we could look at the content of the proposed press
6 release, this one appears not to have the language from that
7 one paragraph that was subject to some proposed edits. Do you
8 see that it's missing? I think it's missing?

9 THE COURT: Are you asking is the material that
10 Dr. Gang suggested be stricken is not in the press release; is
11 that the question?

12 MR. SREBNICK: It's not in the email. That whole
13 paragraph seems to --

14 THE COURT: Is that the draft press release, is that
15 the question?

16 MR. SREBNICK: That's the email of a proposed press
17 release.

18 THE COURT: Is that your question? He hasn't answered
19 the question. Is that what you want to know?

20 MR. SREBNICK: Yeah.

21 THE COURT: Answer the question.

22 A. It looks to me that it's there.

23 Q. Show it to me. That's what I'm asking.

24 THE COURT: Just tell him what you think is in there.

25 A. It says here what Dr. Eli Gang crossed. It says heart line

D38LLEV2

Helper - cross

1 is a new heart attack detection and here it is. Heart line is
2 a new heart attack detection.

3 Q. You agree it's a little bit different than the way Dr. Gang
4 had written it?

5 A. No, it's word by word.

6 Q. Let me see it so I can compare.

7 MR. SREBNICK: May I approach?

8 THE COURT: Yes.

9 A. This is the B4. And this is the B13 and look at the top.

10 Q. OK. OK. So actually if you compare them, it appears that
11 Dr. Gang's edits were not incorporated; am I correct?

12 A. Correct.

13 Q. And that the final version here does not include Dr. Gang's
14 edits, correct?

15 A. Correct.

16 Q. And it's sent back to you, if we could go to the top, and
17 it's proposed to be final; do you see that?

18 A. I see it.

19 Q. OK. And so there was what I would call -- and perhaps
20 you'll have a different terminology -- an editorial decision
21 not to use Dr. Gang's proposed edits but to leave the original?

22 MS. COHEN: Objection, your Honor.

23 THE COURT: Sustained. The objection has been
24 sustained. You don't have to answer.

25 Q. With the exception of that one editorial issue, was there

D38LLEV2

Helper - cross

1 any other part of the press release that anybody proposed be
2 changed?

3 A. No, but this one is a major one.

4 Q. I understand. Anything other than that one paragraph that
5 was approached to be changed?

6 A. No. But in the healthcare industry, you cannot put those
7 words. You have to be accurate. You cannot just, you know,
8 advertise in order to advertise.

9 Q. We have the words that were chosen. You were sent a copy.

10 MR. SREBNICK: And then if we could go to B8, which I
11 would offer into evidence without objection.

12 MS. COHEN: No objection.

13 THE COURT: B8 is in evidence.

14 (Defendant's Exhibit B8 received in evidence)

15 Q. Do you see that that's an email on May 31, the day I
16 believe of the press release that we saw, from Michelle Dela
17 Fuente -- that would be your assistant?

18 A. Yes.

19 Q. Addressed to you, subject, press release?

20 A. Yes.

21 Q. And it asks you to look at the fifth paragraph under "about
22 Cardiac Network" and fix the second line?

23 A. I don't have it.

24 Q. I'm sorry?

25 A. I don't have it. It's not on the screen as well.

D38LLEV2

Helfer - cross

1 Q. I'll show you my copy.

2 MR. SREBNICK: If I may, judge?

3 THE COURT: Yes.

4 Q. It's right here.

5 A. OK.

6 Q. Thank you. Mr. Helfer, did you send any emails in response
7 to the proposed press release?

8 A. I don't remember.

9 MR. SREBNICK: I'd like to now offer into evidence
10 B10.

11 MS. COHEN: No objection, your Honor.

12 THE COURT: B10 is in evidence.

13 (Defendant's Exhibit B10 received in evidence)

14 Q. Do you see this is another email. This time it's from
15 David -- if we look to the bottom of the email, all the way at
16 the bottom, Jen -- from David Federson.

17 A. Can't see.

18 Q. From the webclipping.com team. Do you need a copy?

19 A. Yeah, I can't see.

20 Q. This is B10.

21 A. Sorry.

22 Q. OK. Let me know when you've had a chance to look at it.

23 A. I did.

24 Q. And that certainly alerted Michelle at your office, she
25 forwarded it to you, that the press release had been published,

D38LLEV2

Helper - cross

1 correct?

2 A. It looks like it, yes.

3 Q. Now, are you familiar with a company called MacReport.net?

4 A. No.

5 Q. Wasn't that the company that Cardiac -- and I think you
6 were the one who did it -- contracted to distribute the press
7 releases to the news services?

8 A. Maybe. I can't recall.

9 Q. Let me show you B6, which I offer into evidence.

10 MS. COHEN: No objection, your Honor.

11 THE COURT: B6 is in evidence.

12 (Defendant's Exhibit B6 received in evidence)

13 Q. See if that refreshes your recollection that Cardiac hired
14 MacReport.net to issue the press releases, to disseminate press
15 releases?

16 A. OK.

17 Q. Does that refresh your memory?

18 A. Not really, but...

19 Q. Do you see that Sky Palmer, the senior account executive,
20 sent an email to your assistant Michelle, she then forwarded it
21 to you?

22 A. I'm sure what took place is Fotis or Donna or David called
23 Michelle and told her to do so and she send it to me. I'm not
24 familiar with Sky Palmer or with the MacReport.

25 Q. Do you recall entering into a contract with the

D38LLEV2

Helfer - cross

1 MacReport.net and paying them on a regular basis to issue press
2 releases?

3 A. Probably.

4 Q. Let me show you what's Defense Exhibit B11, the bank
5 statement of Cardiac Network.

6 Mr. Helfer, there may be a binder right next to you
7 that my associate -- a big black binder that has all these
8 exhibits in it?

9 A. It doesn't have it. It doesn't have it. I was looking for
10 it.

11 MR. SREBNICK: Judge, if I may approach then.

12 THE WITNESS: You want to take this?

13 THE COURT: Why don't we just take a luncheon recess
14 now because lunch is served and we'll resume in 45 minutes.

15 (Continued on next page)

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D38LLEV2

1 (Jury not present)

2 THE COURT: We'll try to get organized over lunch
3 time. Just step down and stretch your legs.

4 (Witness not present)

5 THE COURT: Mr. Srebnick.

6 MR. SREBNICK: Yes, your Honor. Thank you, Judge.

7 THE COURT: Maybe get organized over the lunch break
8 so he has what want him to have.

9 MR. SREBNICK: I'll try.

10 THE COURT: I gave that book to Mr. Srebnick. He
11 gives it to you?

12 MS. COHEN: It's actually the government's exhibits
13 that we had provided.

14 THE COURT: All right. We might -- how much longer do
15 you think you have, Mr. Srebnick?

16 MR. SREBNICK: I have to go through the email traffic.
17 There were a lot of exhibits. I would say it's going to be
18 another hour.

19 THE COURT: OK. I'd ask you during the break that
20 we're going to take that you get organized so that he has what
21 you need and we don't have the shuttling back and forth.

22 MR. SREBNICK: We thought we were because we have it
23 displayed on the screen, but he can't read the screen.

24 THE COURT: He can't read the screen. Now that we
25 know that, we'll have to go to plan B.

D38LLEV2

1 MR. SREBNICK: I'll try.

2 MS. COHEN: We'll assist, your Honor, in whatever
3 photocopying that has to be done.

4 MR. SHARGEL: Judge, is there any revised plan on this
5 afternoon?

6 THE COURT: Well, I think we'll resume around 1:30 and
7 probably go to four, 4:30. I'm going to check the weather
8 service. Why?

9 MR. SHARGEL: That's fine, just to make plans.

10 MS. COHEN: Where you going?

11 THE COURT: Cocktails? You think it's Miller time
12 sooner?

13 MS. COHEN: It's Friday early happy hour.

14 Your Honor, the other thing is we have witnesses we
15 flew in. If we could go to five, if the weather permits, we
16 would prefer to do that.

17 THE COURT: Fine. That's what we'll do. 1:30.

18 MS. COHEN: Thank you, your Honor.

19 (Luncheon recess)

20 (Continued on next page)

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D38rlev3

AFTERNOON SESSION

1:30 p.m.

(At the side bar)

THE COURT: Mr. Srebnick, you can try your case any way you want. But with this witness, the point today was he had seen these press releases and drafts many times and he had all kinds of opportunities to make comments, which kind of contradicts his testimony that he never saw the press releases. It was something that was done. Do you have to do it every single time he saw a document?

MR. SREBNICK: If we can all stipulate to what you just said, I don't.

THE COURT: If he saw it five times, if he saw it once, you might be able to get through it and make the point to the jury. I'm not telling you how to practice law. I'm just making a suggestion based on my last experience with the jury, who kept sending out notes saying it's too much, we can't comprehend it all.

I leave it up to you. But if the point is he saw these things and could comment on them but chose not to, which contradicts his testimony on direct, you have made that point pretty well right now. If you want to take a few more, take them all, but consider what I said.

MR. SREBNICK: I hear what you are saying. I'm going to streamline it.

D38rlev3

1 THE COURT: I'm glad you gave him the book. The
2 shuttling back and forth takes a lot of time.

3 MR. SREBNICK: I'll try to speed this up as much as I
4 can, Judge.

5 THE COURT: Thank you very much.

6 MS. COHEN: Your Honor, Howard is working on printing
7 something, but we can start without him, with your permission.

8 THE COURT: Yes, OK.

9 (Continued on next page)

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D38rlev3

(In open court; Jury present)

ZEV HEFLER, resumed.

MR. SREBNICK: May it please the Court I believe the notebook now containing the defense B exhibits, and I say B, bravo, but we now know B means the B series. I'd like to start with B6, which is where we left off. I'm going to try to speed this up as best as I can. Jennifer, if I could have B6.

CROSS-EXAMINATION (continued)

BY MR. SREBNICK:

Q. Mr. Helfer, we were looking at B6. If we could quickly show this is reporting MacReport.net. Sir, I have the bank records if we need to look at them. You will tell me if you need to refresh your memory. Isn't it true that Cardiac hired MacReport.net and that you were involved in that in paying them on a monthly basis?

A. It's true.

Q. MacReport.net was involved in disseminating press releases, distributing the press releases, true?

A. Yes.

Q. Your assistant Michelle de la Fuente was involved in assisting in the process of getting to MacReport.net those press releases, true?

A. Yes.

Q. If we look at the bottom of the page. Right before Sky Palmer's signature, the last paragraph, do you see where Sky

D38rlev3

1 Palmer writes to you and says -- excuse me -- to Michelle and
2 says, "If you have any questions or concerns, please don't
3 hesitate to call. Also, as per our conversation, please do not
4 forget to have Zev send us confirmation via email stating that
5 you, Michelle, are duly authorized." Do you see that?

6 A. I see it.

7 Q. Great. Let's move forward to a couple of questions about
8 Michelle de la Fuente. Do you recall that you participated in
9 June of 2007 in arranging that she, too, would be a stockholder
10 of the company?

11 A. Yes.

12 MR. SREBNICK: If we could quickly put B17 on the
13 screen.

14 Q. Do you recall a letter you wrote to Atlas Stock Transfer
15 issuing 300 shares to Michelle de la Fuente?

16 A. Yes.

17 MR. SREBNICK: I move B17 into evidence.

18 MS. COHEN: No objection, your Honor.

19 THE COURT: B17 is in evidence.

20 (Defendant's Exhibit B17 received in evidence)

21 MR. SREBNICK: If we put B18 on the screen. Without
22 objection, Judge, B18 I moved into evidence.

23 MS. COHEN: No objection.

24 THE COURT: B18 is in evidence.

25 (Defendant's Exhibit B18 received in evidence)

D38rlev3

1 Q. You see there is an email dealing with the restriction
2 legends on certain certificates of her stock?

3 MS. COHEN: Objection, your Honor.

4 THE COURT: Sustained.

5 Q. Excuse me. Forgive me. I withdraw that. Let's read it.
6 "Dear Amy. Please remove restriction legends off certificate
7 numbers," and then it has the numbers. "Thank you. Best
8 regards, Zev." Do you see that?

9 A. I do.

10 Q. That's B18. Now I'd like to move forward in time to the
11 period where Agoracom, A-G-O-R-A-C-O-M, was in charge of
12 Cardiac's press releases. Do you recall that occurring?

13 A. I do.

14 Q. Do you recall that you had a contact there you previously
15 identified as Jim Haron, correct?

16 A. Correct.

17 Q. Do you recall that Cardiac actually entered into a written
18 agreement with Agoracom?

19 A. Yes.

20 Q. Do you recall that the agreement included a person by the
21 last name of Tsiolis, is the best I can pronounce it?

22 A. I don't recall it.

23 Q. Let me direct your attention to B33, which I would move
24 into evidence, which is a correspondence between Agoracom and
25 Cardiac?

D38rlev3

1 MS. COHEN: No objection, your Honor.

2 THE COURT: What is the exhibit number? B31?

3 MR. SREBNICK: B33.

4 THE COURT: B33 is in evidence.

5 (Defendant's Exhibit B33 received in evidence)

6 Q. You see it is August 8, 2007?

7 A. What number?

8 THE COURT: B33.

9 Q. Do you see there is a person by the name of Carrie
10 Gartland. I had asked you about a Carrie earlier. Do you see
11 that name now?

12 A. Yes.

13 Q. It is addressed to Cardiac Network, Dear Zev, do you see
14 that?

15 A. Yes.

16 Q. It deals with the executed copy of the agreement between
17 Cardiac and Agoracom, correct?

18 A. Yes.

19 Q. If we could go to the signature page, which I think has the
20 number 429 at the bottom. Thank you, Jennifer. The reason I
21 asked you about George Tsiolis is because you notice there he
22 is the person who signs on behalf of Agoracom?

23 A. Fair, right.

24 Q. Did you ever meet Mr. Tsiolis?

25 A. Never.

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1 Q. Did you know the company was in Canada, Agoracom?

2 A. Yes, I did know that.

3 Q. Let me move into evidence, but we don't need to go through
4 them a series of checks. Do you recall that Cardiac paid
5 Agoracom \$5,000 a month pursuant to that agreement?

6 A. Yes.

7 MR. SREBNICK: Judge, I would offer without objection
8 B27, 28, 30, and 31 as examples of those checks.

9 MS. COHEN: One moment, your Honor. 27, 28?

10 THE COURT: 30 and 31.

11 MS. COHEN: Thank you, your Honor. No objection, your
12 Honor.

13 THE COURT: 27, 28, 30, and 31 are in evidence.

14 (Defendant's Exhibits 27, 28, 30, and 31 received in
15 evidence)

16 Q. If I could ask you to pull up B33 again. That's the
17 contract. And if we could go to paragraph 5 of that contract,
18 entitled "Duties of Company." If we publish that one
19 paragraph, 5.1, it provides that "Cardiac shall supply Agoracom
20 on a regular and timely basis with all approved data and
21 information about Cardiac, its management, products, and
22 operations," etc. Do you see that?

23 A. Yes.

24 Q. Then it provides in that same paragraph that "Cardiac shall
25 be responsible for advising Agoracom of any facts which would

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1 affect the accuracy of any prior data or information." Do you
2 see that?

3 A. Yes.

4 Q. Moving along, I'd like to now discuss with you some of the
5 activity between Cardiac and Agoracom. Would it be fair to say
6 Agoracom was now going to be in charge of investor relations on
7 behalf of Cardiac?

8 A. Yes.

9 Q. By investor relations do we mean stockholders, people who
10 buy the stock or might consider buying the stock, who to
11 contact at Agoracom for information?

12 A. I would say that they were more in charge on press
13 releases.

14 Q. Let's take a look at B24, which I offer into evidence, an
15 email August 8, 2007.

16 THE COURT: Any objection, Ms. Cohen?

17 MS. COHEN: No objection, your Honor.

18 THE COURT: B24 is received in evidence.

19 (Defendant's Exhibit B24 received in evidence)

20 Q. You see it is an email from Jim at Agoracom, August 8,
21 2007, to Donna's email address with a copy to you, to Fotis, to
22 someone else at Agoracom?

23 A. Yes, I do.

24 Q. Mr. Jim Haron on behalf of Agoracom is asking in the second
25 paragraph, "Also, for press releases please forward to me the

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1 five key points of your press release. This is the who, why,
2 where," etc. Do you see that?

3 A. Yes.

4 Q. The next sentence in that paragraph says, "Once received, I
5 will then write the press release for you. If you need
6 anything, please do not hesitate to contact me at the numbers
7 provided below."

8 A. I see that.

9 Q. I'd like to take a look at B25, B25, an email, Monday,
10 August 13, 2007.

11 A. OK.

12 Q. That is an email from Agoracom both to you and to Donna
13 Levy indicating, "As you are aware, Agoracom does not take
14 phonecalls from investors and information gatherers. We
15 instruct everyone to go to the company's official IR HUB which
16 will be active tomorrow," etc. Do you see that?

17 A. Yes.

18 THE COURT: Is this in evidence?

19 MR. SREBNICK: I offer it into evidence. Forgive me.

20 MS. COHEN: No objection your Honor.

21 THE COURT: B25 is in evidence.

22 (Defendant's Exhibit B25 received in evidence)

23 MR. SREBNICK: I would offer B26, an email dated
24 August 10, 2007, from Agoracom, I believe without objection.

25 MS. COHEN: No objection, your Honor.

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1 THE COURT: B26 is in evidence.

2 (Defendant's Exhibit B26 received in evidence)

3 Q. Do you see that Mr. Haron from Agoracom is writing to you
4 all and he states, "Do you have a Word document of all the
5 items on the Cardiac Network website? As you know, the website
6 is all Flash-related, and getting things from there is very
7 difficult. Also, is there a list of officers from the company?
8 This being a Pink Sheet company, information is scarce, so if I
9 can be provided with as much as possible, then the IR Hub can
10 be completed." Do you see that?

11 A. I do.

12 Q. I'd like to discuss with you another press release issued
13 by the company, I believe it is Government Exhibit 101-7.

14 THE COURT: Does he have it, Mr. Srebnick?

15 MR. SREBNICK: It's not in that notebook, but we'll
16 get it for him.

17 Q. Can you see the headline on your screen?

18 A. I can see.

19 Q. Just the headline, right? That's all.

20 A. Yes.

21 Q. Now I'd like to turn your attention to some emails about
22 that press release B19, which I would offer into evidence.

23 A. B19?

24 Q. B19, yes, please.

25 THE COURT: Any objection to B19, Ms. Cohen?

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1 MS. COHEN: No objection, your Honor.

2 THE COURT: B19 is in evidence.

3 (Defendant's Exhibit B19 received in evidence)

4 A. OK.

5 Q. If we can put that on the screen. You see that B19 is an
6 email August 9, 2007, from your assistant Michelle to Zev.

7 It's a forwarding of an email that says, "Feel free to make any
8 corrections or add what you think is important." Do you see
9 that language?

10 A. Yes.

11 Q. If we can go to the headline of that email -- excuse me --
12 of the proposed press release, "Cardiac Network receives
13 Medicare approval to bill for its Cardiac telemetry services,"
14 correct?

15 A. Yes, sir.

16 MR. SREBNICK: If we could then move into evidence
17 B20, which is --

18 MS. COHEN: No objection, your Honor.

19 THE COURT: B20 is in evidence.

20 (Defendant's Exhibit B20 received in evidence)

21 Q. Is that the contract or the letter regarding the telemetry
22 services?

23 A. That's the providership number that was granted to us by
24 Medicare, correct.

25 Q. That's the subject of the press release, correct?

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1 A. Yes.

2 MR. SREBNICK: If I could offer now B21 into evidence.

3 MS. COHEN: No objection, your Honor.

4 THE COURT: B21 is in evidence.

5 (Defendant's Exhibit B21 received in evidence)

6 MR. SREBNICK: And if we could publish that on the
7 screen.

8 Q. Do you see that is an email from the MacReport to you
9 regarding the paid invoice for that press release. Do you see
10 that?

11 A. I do.

12 MR. SREBNICK: If I could have a moment.

13 Q. Now I'd like to publish on the screen, I hope we have it,
14 Government Exhibit 101-11. I think that is a government
15 exhibit that is already in evidence. Or 101-9 or 101-10. They
16 are all similar.

17 THE COURT: Which one do you want?

18 MR. SREBNICK: Whichever one is easiest for Becky to
19 get. We can do 10. 101-10 we'll have on the screen in a
20 moment, Judge. It should already be in evidence.

21 THE COURT: I think you're going to have to look on
22 the screen.

23 MR. SREBNICK: Right.

24 THE WITNESS: I do have it.

25 Q. This is something I think that was discussed yesterday.

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1 This is a promotion titled "Soon millions of American seniors
2 will carry the telephonic HeartOne wherever they go." Do you
3 see the title?

4 A. Yes.

5 Q. There is a picture there of Jarret Wollstein. Do you
6 recognize him as someone you met in person, if you can
7 recognize it from the picture?

8 A. Not really. I don't remember the way he looks.

9 Q. If we turn to page 2 of this promotion, there are some
10 illustrations which again are hard to see on the print copy and
11 some description of how the product might work, correct? Do
12 you see that?

13 A. Yes, I do.

14 Q. Now I would like to go to page 5 of 11, where it talks
15 about that \$592 million that you think you commented on
16 yesterday.

17 A. Yes. Wait, I don't have it.

18 Q. That's at page 5 of 11. I'd like to highlight the top
19 half.

20 THE COURT: Just a minute.

21 MR. SREBNICK: Sorry.

22 A. I don't think I have it. OK, thank you.

23 Q. For once I'd like to read the promotion, just the section
24 that is there, so we can all read it together so it is clear
25 exactly what it is saying about this 592 million. Read along

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1 and tell me if I have read it correctly so we publish it
2 correctly.

3 "For a \$1 stock, the potential revenue is outrageous.

4 "Now let's say that the typical general practitioner
5 or internist has 500 patients and wants 5 monitors to meet his
6 patient load. I've done the numbers, and here's why I'm so
7 sure this \$1 stock is going to explode.

8 "If a doctor has 5 units and prescribes each of them
9 just once a month, that doctor generates a minimum income to
10 Cardiac Network of \$1,645 a month (5 times \$329 equals \$1,645)
11 or \$19,740 a year."

12 THE COURT: Do you have a question here, Mr. Srebnick?

13 MR. SREBNICK: I'd like to publish it.

14 THE COURT: The jury can read it. Why don't you ask
15 the question.

16 MR. SREBNICK: I'll give them a chance to read it
17 then.

18 THE COURT: What is the question?

19 Q. Is it fair when one reads this that this is simply some
20 sort of projection on the basis that if so many doctors
21 prescribe so many patients based on a price per unit, then the
22 potential for this product could be revenues of 592 million a
23 year?

24 A. No.

25 MS. COHEN: Objection, your Honor.

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1 THE COURT: The objection is sustained.

2 MR. SREBNICK: I'll move on, Judge.

3 THE COURT: Thank you.

4 Q. In terms of your view of what the potential of the stock of
5 Cardiac could achieve, back when the stock was well below \$3
6 did you not tell FINRA or NASD back in 2007, during a meeting
7 Mr. Shargel asked you about, that you thought that \$5 a share
8 was achievable?

9 A. I don't know. I don't remember.

10 Q. In fact, did you not tell the regulators that were
11 interviewing you in their capacity as regulators that you
12 thought 20 to \$30 was an achievable stock price for Cardiac?

13 A. I doubt that I said that.

14 Q. I want to be sure now. Did you not tell --

15 A. I don't remember. I really don't remember.

16 Q. If you have any memory at all, what price did you tell the
17 regulators you thought was an achievable price for the shares
18 of Cardiac?

19 A. No, I don't remember.

20 Q. When you met with those regulators, they asked you about
21 this promotion, did they not?

22 A. Who are the regulators?

23 Q. From NASD.

24 A. You mean --

25 Q. In August of 2007.

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1 A. I didn't meet anyone of them.

2 Q. Over the telephone didn't you have a conversation with
3 them?

4 A. Yes, I did.

5 Q. A telephone meeting, do you recall that?

6 A. OK. Very vaguely.

7 Q. Let me make sure I'm clear. When I'm referring to a
8 meeting, I'm including through the telephone.

9 A. OK.

10 Q. Did you indicate to them, first, that you thought that the
11 stock price of \$5, \$20, or \$30 was achievable? Do you recall
12 that? Yes or no.

13 A. No, I don't recall it.

14 Q. Do you recall telling those regulators on the telephone
15 that in fact you had reviewed a draft of this report that we
16 have just shown on the screen?

17 A. I don't recall the conversation, sir.

18 Q. I'm sorry?

19 A. I don't recall the conversation.

20 THE COURT: He does not recall the conversation.

21 Q. Let me establish for you, move into evidence, B41.

22 MS. COHEN: No objection, your Honor. It is also in
23 evidence I believe.

24 THE COURT: B41 is in evidence again then.

25 (Defendant's Exhibit B41 received in evidence)

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1 Q. I think yesterday you testified about this email. Do you
2 recall?

3 A. Yes, I did.

4 Q. That's June 26th of 2007. Do you see that?

5 A. Yes.

6 Q. I'd like to show you and move into evidence B40, an email
7 from July 23, 2007.

8 MS. COHEN: No objection, your Honor.

9 THE COURT: B40 is in evidence.

10 (Defendant's Exhibit B40 received in evidence)

11 Q. Do you see that is an email, "Zev, read this over and over.
12 Make sure there are no mistakes in it. Soon it will go up on
13 the Web, so we want to make sure we are not telling any lies or
14 mistruths. It has to be perfect. I love it. Donna."

15 A. I do see it.

16 MR. SREBNICK: Is there another page to that?

17 Q. There was an attachment to that. Do you see that? It's
18 not on the email we have. Do you see there is an attachment,
19 final Cardiac copy?

20 A. I see that.

21 Q. Do you know what that attachment was?

22 A. I don't remember.

23 Q. When you met with Mr. Wolfer -- what was his name?

24 Wollstein. Do you recall discussing what he would be doing?

25 A. Yes.

D38rlev3

1 Q. Was he going to be writing about the company?

2 A. He's supposed to do some marketing for the heart club.

3 MR. SREBNICK: If I could publish B39.

4 THE COURT: Is that in evidence?

5 MR. SREBNICK: I move it into evidence.

6 MS. COHEN: No objection, your Honor.

7 THE COURT: B39 is in evidence.

8 (Defendant's Exhibit B39 received in evidence)

9 MS. COHEN: I believe it is also a government exhibit.

10 Q. Do you see that it is an email from Donna to you dated July
11 23, 2007?

12 A. Yes.

13 MR. SREBNICK: If we can show the whole what is
14 embedded in the press release, if you can get the whole top
15 half. I don't know if that helps. Maybe just half.

16 Q. Do you see that the \$592 million number that eventually
17 makes it into Mr. Wollstein's investor report, whatever he
18 publishes, was actually reviewed and shown to you before it was
19 published?

20 A. I see that.

21 Q. I'd like to now go to the next press release. It's a press
22 release August 15, 2007. I believe it is a Government Exhibit
23 201-49C, I think is how it was presented yesterday. If we
24 could orient the jury by putting it on the screen, if possible.
25 Thank you Becky, so much. If we could perhaps zoom in.

D38rlev3

1 Do you see this was an August 15, 2007, press release
2 announcing that Agoracom would be handling investor relations?
3 Do you see that?

4 A. Correct.

5 Q. Do you recall that that was also a subject of emails to you
6 where you were reviewing the proposed press release? I have
7 the emails. If you don't recall, I can go through it.

8 A. I believe you.

9 Q. The procedure would be similar, where drafts of the
10 proposed press releases would be circulated to you and then
11 eventually they would be released to the public either through
12 MacReport.net or some other source, correct?

13 A. Yes, after corrections supposed to be implemented.

14 Q. There was a press release, the next one I'd like to go
15 into, August 23, 2007. I have it as Government Exhibit 101-3.
16 We don't need to publish it. I think we can all remember. The
17 one about Cardiac Network partners up with Tierra Technologies
18 to provide the IT infrastructure.

19 A. Yes.

20 MR. SREBNICK: Do you have a different exhibit number?

21 MS. COHEN: It's Government Exhibit 201-49F.

22 MR. SREBNICK: 201-49F.

23 Q. Do you recall that that press release was also the subject
24 of email exchanges before it was released? Do you recall that?

25 A. Maybe.

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1 Q. Let me show you what I move into evidence now, B46, an
2 email. I offer B46.

3 MS. COHEN: No objection, your Honor.

4 THE COURT: B46 is in evidence.

5 (Defendant's Exhibit B46 received in evidence)

6 Q. Do you see that on the screen? It's from Jim at Agoracom
7 to you and to Donna with an attachment which is the press
8 release for the Tierra Technologies.

9 A. I do.

10 MR. SREBNICK: Very good. Now I'd like to offer into
11 evidence B52, an email September 4, '07. Any objection?

12 MS. COHEN: No objection, your Honor.

13 THE COURT: B52 is in evidence.

14 (Defendant's Exhibit B52 received in evidence)

15 Q. Do you see this is an email from Jim at Agoracom to you
16 with a copy to Donna? The subject is the Humana press release,
17 and it has an attachment. Do you see that?

18 A. Yes. I don't see the attachment, though.

19 Q. The email reflects that there was an attachment.

20 A. OK.

21 Q. Do you recall writing any emails in response to this one,
22 to Jim at Agoracom?

23 A. No.

24 Q. Now I'd like to move on to the next one, a press release.
25 Do you remember one in September of 2007, September 14,

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1 regarding MRM Medical?

2 A. Yes, I remember. What number is it?

3 Q. Let me show you B55, which I offer into evidence at this
4 time.

5 MS. COHEN: No objection, your Honor.

6 THE COURT: B55 is in evidence.

7 (Defendant's Exhibit B55 received in evidence)

8 Q. Once again it's Jim Haron at Agoracom sending you, Donna,
9 an email with an attachment entitled MRM press release. Do you
10 see that?

11 A. Yes.

12 Q. Do you recall that press release or --

13 A. I do.

14 Q. Today do you recall it?

15 A. I do.

16 MR. SREBNICK: I'd also like to move into evidence
17 B56, B bravo 56, another email.

18 MS. COHEN: No objection, your Honor.

19 THE COURT: B56 is in evidence.

20 (Defendant's Exhibit B56 received in evidence)

21 MS. COHEN: I think this is also a government exhibit.

22 Q. I'd like to start at the bottom. You see Donna sends an
23 email to Jim at Agoracom that says "Check with Zev see if it is
24 OK. There is one mistake. MRM in one paragraph you have MDM."
25 Do you see where it says that?

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1 A. I see.

2 Q. Do you see that Donna appears to have caught a typo-
3 graphical error?

4 A. I do.

5 Q. Then if we look to the top of the page, Jim sends to Donna
6 and you the updated press release regarding MRM. He says,
7 "Disregard the earlier PR. This is the latest." To you see
8 that?

9 A. I do.

10 MR. SREBNICK: I would like to move into evidence and
11 publish B57. I believe there is no objection either, Judge.

12 THE COURT: I haven't heard one.

13 MS. COHEN: I'm just trying to find it, your Honor.
14 No objection, your Honor.

15 THE COURT: B57 is in evidence.

16 (Defendant's Exhibit B57 received in evidence)

17 Q. This is an email from Jim at Agoracom to you with a copy to
18 Donna at 2:11 in the afternoon on September 13. "Zev, just
19 confirm with Donna that the press release is OK to go tomorrow
20 at 9:00 a.m. Eastern. Jim." Do you see that?

21 A. I do.

22 Q. Do you recall that on September 13 Cardiac paid
23 MacReport.net to distribute that press release?

24 A. If you say so. I don't have the ledger in front of me.

25 Q. Take a look at B54, which I move into evidence at this

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1 time.

2 A. B?

3 Q. B54.

4 THE COURT: Any objection, Ms. Cohen?

5 A. OK.

6 THE COURT: Just a minute now.

7 MS. COHEN: No objection, your Honor.

8 THE COURT: B54 is in evidence.

9 (Defendant's Exhibit B54 received in evidence)

10 Q. Do you see this is an email from the MacReport confirming
11 payment? Do you see that?

12 A. I see that.

13 Q. I have the bank records. Does that refresh your memory
14 that it was paid for?

15 A. Yes.

16 Q. Next, press release October 10, 2007, Government Exhibit
17 201-49J. Do you remember the press release about Cardiac
18 Network receives Blue Shield of California approval?

19 A. I remember, yes.

20 Q. Do you recall that actually you were the one who made sure
21 that MacReport.net got paid to issue that press release?

22 A. I believe you, yes.

23 Q. Then we will move on to the next press release. October
24 16, 2007, do you recall a press release? It's 201-49K.

25 A. I don't have it.

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1 Q. I'll read you the title, see if you remember. "Due to
2 recent approvals of Blue Shield of California, Medicare, and
3 other insurance companies, Cardiac Network, Inc. has expanded
4 its capacity." Do you recall that one? If you don't, you
5 don't.

6 A. No.

7 Q. Let's take a look at B62, if I could offer that into
8 evidence at this time. B62.

9 MS. COHEN: No objection, your Honor.

10 THE COURT: B62 is in evidence.

11 (Defendant's Exhibit B62 received in evidence)

12 MR. SREBNICK: If we could take a look at that. Bear
13 with me. I'm moving as quickly as I can.

14 Q. B62, if we go to the end of the chain of emails at the
15 bottom of the page, do you see that it's an email from Peter
16 Priel of Tierra technology to Zev Helfer and Michelle de la
17 Fuente, the assistant?

18 A. Yes.

19 Q. Then, if we go up to the middle of the page, the email from
20 Zev Helfer to Agoracom, PR items, it says, "Jim, as per our
21 phone conversation, I am sending some information to you on our
22 huge network expansion. It will greatly improve the service to
23 the referring physicians and their patients." Do you see you
24 sent that email to Jim?

25 A. I do.

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1 Q. Then at the top of the page, Jim from Agoracom sends to you
2 on October 15, 2007, "Zev, Donna mentioned something about
3 receiving a third shipment of transmitters from Israel. Do we
4 want to mention something about that? Jim." Do you see that?

5 A. I do.

6 MR. SREBNICK: That's October 15, 2007, at 12:44 p.m.
7 I'd like to offer B63, Judge, which is an email October 15,
8 2007, at 1:15 p.m.

9 MS. COHEN: No objection, your Honor.

10 THE COURT: B63 is in evidence.

11 (Defendant's Exhibit B63 received in evidence)

12 Q. Do you see 30 minutes later, roughly, there is an email
13 from Jim at Agoracom to you and to Donna, Donna is
14 Luvmee40@aol, subject infrastructure PR, and Jim is asking,
15 "Please review the attached PR and let me know of any changes."
16 Do you see that?

17 A. I do.

18 Q. PR means press release, correct?

19 A. Correct.

20 MR. SREBNICK: I would now move B64 into evidence,
21 your Honor, I think without objection.

22 MS. COHEN: No objection, your Honor.

23 THE COURT: 64 is in evidence.

24 (Defendant's Exhibit B64 received in evidence)

25 MR. SREBNICK: If we could publish the top of the

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1 page, top half.

2 Q. From Jim at Agoracom to Zev Helfer, 1:17 p.m. on October
3 15. The subject is PR. It's titled "Cardiac Network, Inc.
4 expands network capacity and takes shipment of additional
5 monitor/transmitters." Do you see that.

6 A. I do.

7 Q. On this one Donna doesn't appear to be copied, at least not
8 according to the email we have here, right?

9 A. Right.

10 Q. Next, the press release that's been shown to the jury as
11 Government Exhibit 201-49L, the announcement of the HeartOne
12 Club, do you remember that press release?

13 A. I don't have it in front of me.

14 Q. Do you remember from your own memory?

15 THE COURT: You remember there is a press release on
16 HeartOne?

17 THE WITNESS: Yes, I do.

18 MR. SREBNICK: Good.

19 Q. Do you recall that the issue of HeartOne was a business
20 idea that you in fact discussed with those regulators on the
21 telephone who interviewed you, the NASD? They asked you about
22 it and you talked to them about it, do you recall?

23 A. No, I don't recall the details of this conversation.

24 Q. Do you recall that this idea of the HeartOne Club -- you
25 did discuss it with Donna, correct?

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1 A. Yes, I did.

2 Q. Donna suggested that perhaps it would make sense to
3 register some web names or domain names?

4 A. Yes, she did.

5 Q. So that if it was successful, you all would have the
6 website, so to speak, or the web address I guess it's called?

7 A. A separate website, correct.

8 Q. Let me show you B66?

9 MR. SREBNICK: If I could offer that into evidence
10 without objection, Judge.

11 MS. COHEN: No objection, your Honor.

12 THE COURT: 66 is in evidence.

13 (Defendant's Exhibit B66 received in evidence)

14 MR. SREBNICK: If we could publish it. I'm moving as
15 quickly as I can. I hope everybody bears with me.

16 Q. Donna says, "The visit to Godaddy.com website" -- and for
17 those of us who don't see commercials on TV, Go Daddy is where
18 domain names are purchased by people and companies?

19 MS. COHEN: Objection, your Honor.

20 THE COURT: You're testifying now?

21 MR. SHARGEL: I'm asking him.

22 THE COURT: Objection sustained.

23 Q. Do you know what Go Daddy is?

24 A. Yes, I do.

25 Q. Please tell us what Go Daddy is.

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1 A. It's a place that you can register. It's a company that
2 you can register a website.

3 Q. Donna is proposing to register the websites under those
4 names so that they become the property, so to speak, of
5 Cardiac?

6 MS. COHEN: Objection, your Honor.

7 THE COURT: Sustained.

8 A. Of the heart club.

9 THE COURT: Sustained. You don't have to answer.

10 Q. What was Donna proposing?

11 A. Different kinds of names.

12 Q. This is September 10 of 2007, right, the email?

13 A. Yes.

14 Q. As early as September '07 there is this discussion about
15 HeartOne Club. I would like to now turn to some emails in
16 November of 2007.

17 MR. SREBNICK: B67 I offer into evidence.

18 MS. COHEN: No objection, your Honor.

19 THE COURT: B67 is in evidence.

20 (Defendant's Exhibit B67 received in evidence)

21 Q. Do you see it's an email from Donna to you, November 8,
22 2007? Excuse me. November 6, 2007. I need to check my
23 glasses. If we could publish just the top half of the email,
24 the entire top half. It's a press release that's going to
25 announce that Cardiac will launch, not it has launched but will

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1 launch the HeartOne Club, right?

2 A. It refers to launch.

3 Q. The first sentence is, "Cardiac Network today announced
4 that they will launch the HeartOne Club," blah-blah-blah,
5 right?

6 A. Correct.

7 Q. That's the first draft. I'd like to show you B68, the next
8 email. The one we just saw was 1:33 p.m.

9 MR. SREBNICK: I'd offer B68, Judge, an email at 2:27
10 p.m. that same day.

11 MS. COHEN: No objection.

12 THE COURT: Received in evidence B68.

13 (Defendant's Exhibit B68 received in evidence)

14 Q. You see this appears to be an email. If we can just do the
15 top half to make it easy for the jury. Its subject is New One.
16 Do you remember this, that there were some edits made to the
17 email -- excuse me -- to the proposed press release, and it was
18 emailed from Donna to you? Do you recall that?

19 A. Probably, yes.

20 Q. Let's go to B69.

21 MR. SREBNICK: Judge, I'd offer B69.

22 MS. COHEN: No objection.

23 THE COURT: Is this another draft of the same press
24 release?

25 MR. SREBNICK: Yes, it is.

D38rlev3

1 THE COURT: How many drafts are we going to see?

2 MR. SREBNICK: It's a revised draft, Judge, I should
3 say, not the exact same draft. It's a revised draft.

4 THE COURT: How many drafts are we going to see of the
5 press release?

6 MR. SREBNICK: I think one this is the last one.

7 THE COURT: Good. I hope so.

8 MR. SHARGEL: That's correct.

9 MR. SREBNICK: That's the business.

10 Q. "Donna sends you the final copy that should go out at 2:48
11 p.m.," do you see that?

12 A. Yes.

13 Q. Very good. Do you recall that Cardiac paid for this press
14 release to be issued, paid to MacReport.net?

15 A. If you say so, I believe you.

16 MR. SREBNICK: Judge, I'll offer, and we don't need to
17 publish now, B65 and B70. I move into evidence the emails and
18 payments that deal with that issue.

19 A. What number?

20 THE COURT: 65 and 70. Any objection, Ms. Cohen?

21 MS. COHEN: No objection, your Honor.

22 THE COURT: B65 and B70 are in evidence.

23 (Defendant's Exhibits B65 and B70 received in
24 evidence)

25 MR. SREBNICK: Now I'd like to show you what I need to

D38rlev3

1 mark as a different number because we don't have it premarked.
2 Judge, I'm going to mark B89. May I approach the witness?
3 It's the only copy.

4 THE COURT: Yes.

5 MR. SREBNICK: Is there any objection to B89?

6 MS. COHEN: No, your Honor.

7 MR. SREBNICK: I move into evidence B89.

8 THE COURT: B89 is received in evidence.

9 (Defendant's Exhibit B89 received in evidence)

10 Q. Do you see this is an email? I don't know how good your
11 eyes are.

12 A. Not so good.

13 Q. That makes two of us. From Zev Helfer to Eli Gang, January
14 31 of 2008. Do you see that?

15 A. Yes, I do.

16 MR. SREBNICK: Now let me publish it to the jury, if I
17 could, on the ELMO.

18 THE COURT: Yes.

19 Q. It appears to be an email from you to Eli Gang with an
20 attachment Cardiac underscore network underscore inc2.doc. Do
21 you see that?

22 A. Yes.

23 Q. You use the words "try this," do you see that?

24 A. Yes.

25 Q. If I turn the page, do you see that this is a proposed

D38rlev3

1 press release that in fact you are sharing with Dr. Gang to
2 announce the launching of HeartOne that had been previously
3 delayed? Do you see that in the first paragraph?

4 A. Yes, I do.

5 Q. I'll pull it off the screen for a moment. Do you remember
6 that one of the early press releases had language in it about
7 cardiovascular disease affecting 70 million people, etc.?

8 A. Yes.

9 Q. We talked about that at the beginning of my examination.

10 A. Yes, I do.

11 Q. Do you see that you incorporated it into this proposed
12 press release that you sent to Eli Gang?

13 MS. COHEN: Objection, your Honor.

14 THE COURT: Sustained.

15 Q. Do you see that that language appears in this press
16 release, the language about 70 million people, 1.1 million
17 Americans suffering heart attacks, etc.?

18 A. Yes. I forwarded the email that I received from Donna.

19 THE COURT: Do you have a question, Mr. Srebnick?

20 MR. SREBNICK: Yes, I do.

21 Q. Yesterday you were asked about a press release regarding
22 this company called HealthCare Options. Yesterday you had no
23 recollection of that press release, correct?

24 A. Correct.

25 Q. In fact, yesterday you had no recollection of HealthCare

D38rlev3

Options at all, correct?

A. Correct.

Q. Today Mr. Shargel showed you documents that show that your company was actually paying and had hired HealthCare Options, correct?

A. This is true.

Q. That there was a contract with HealthCare Options between Cardiac and HealthCare Options, correct?

A. This is true.

Q. With your signature on it, correct?

A. This is true.

Q. Would it be fair to say, then, that you had simply forgotten about HealthCare Options, the press release about HealthCare Options, the contract about HealthCare Options when you testified to the jury yesterday?

MS. COHEN: Objection, your Honor.

THE COURT: Sustained.

Q. Had you forgotten about it?

MS. COHEN: Objection.

THE COURT: Sustained.

Q. Why did you tell the jury under oath yesterday that there had never been any relationship between HealthCare Options and Cardiac?

MS. COHEN: Objection.

THE COURT: Sustained.

D38rlev3

1 Q. Do you want to change your testimony from yesterday?

2 THE COURT: Sustained.

3 MR. SREBNICK: Judge, I have one more area, and I'll
4 be done.

5 THE COURT: Are you going to get to that area now?

6 MR. SREBNICK: Yes, Judge. I just need one minute. I
7 have done my best to shorten it up. Thank you.

8 Judge, I have good news. I'm all done. Thank you.

9 MS. COHEN: The government has no redirect, your
10 Honor.

11 THE COURT: Mr. Helfer, you are excused. Thank you.

12 (Witness excused)

13 THE COURT: Mr. Master?

14 MR. MASTER: At this time the government calls Eli
15 Gang.

16 ELI GANG,

17 called as a witness by the government,

18 having been duly sworn, testified as follows:

19 THE COURT: Doctor, could you spell your name for the
20 record, please.

21 THE WITNESS: Yes. The last name is gang, G-A-N-G.

22 THE COURT: Go ahead, Mr. Master.

23 DIRECT EXAMINATION

24 BY MR. MASTER:

25 Q. Where were you born, sir?

D38rlev3

Gang - direct

1 A. Israel.

2 Q. When did you move to the U.S.?

3 A. 1960.

4 Q. Where did you grow up?

5 A. Brooklyn.

6 Q. Where did you go to college?

7 A. Columbia College.

8 Q. Where did you go to medical school?

9 A. Columbia University in New York.

10 Q. Where did you do your post-doctoral training?

11 A. In the Columbia system, Roosevelt Hospital and Columbia
12 University, the main hospital.

13 THE COURT: Doctor, could you speak right into the
14 microphone, please. Pull your chair up. Thank you.

15 Q. For how long have you been a practicing physician?

16 A. 30 years or so.

17 Q. What is your area of specialty?

18 A. Cardiology and clinical electrophysiology.

19 Q. Could you explain to the jury what that means.

20 A. Yes. Electrophysiology is a subsection, a subspecialty of
21 cardiology that deals with rhythm disturbances of the heart.

22 Q. Where do you work now?

23 A. In Los Angeles at Cedar Sinai Medical Center and in a
24 private practice group, a multispecialty group, cardiology
25 group mostly.

D38rlev3

Gang - direct

1 Q. What, if any, faculty positions do you have?

2 A. I'm at the UCLA Medical School, clinical professor of
3 medicine.

4 Q. How many publications have you authored?

5 A. About 130.

6 (Continued on next page)

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D38LLEV4

Gang - direct

1 BY MR. MASTER:

2 Q. And how many patents have you obtained?

3 A. With my name on them, about 12. Then I cooperated on about
4 50 others.

5 Q. How do you know Zev Helfer?

6 A. I met him about 25 years ago, 20 years ago, thereabouts.

7 Q. How did you meet him?

8 A. Yeah, he was at the time running a company that did cardiac
9 monitoring and it turns out we have mutual friends from Israel
10 and I was introduced to him and thought I might do business
11 with him. It turned out I didn't at the time.

12 Q. And I'd like to direct your attention to 2006. Did there
13 come a time when Zev contacted you during that year with a
14 business idea?

15 A. Yes. He called me around 2006 and said he thought about
16 starting another Cardiac monitoring company and would I be
17 interested in being the medical director and I said yes.

18 Q. What was the concept?

19 A. The concept, which is already and has been and was before
20 then readily available to doctors, is that patients can wear
21 monitoring or employ monitors for heart rhythm disturbances.
22 They can take it home with them. They can take it anywhere
23 they want to and should they have symptoms or not, there are
24 different units with different technologies, the information
25 can be sent over the telephone at the time -- now it's done

D38LLEV4

Gang - direct

1 through cell phone technology -- to a 24/7 monitoring station
2 that can determine if the patient has a real rhythm problem or
3 not. It's a service to physicians and to patients.

4 Q. And from where were you going to get the technology?

5 A. There are a few companies that make that kind of a
6 recording system and work stations available. The one that we
7 ultimately chose was an Israeli company called Aerotel.

8 Q. Who identified that technology?

9 A. That company?

10 Q. Yes.

11 A. I think it may have been Zev, but I'm familiar with the
12 company.

13 Q. And what did you think of the technology?

14 A. It was state of the art at the time.

15 Q. Now, who was going to provide the funding for this idea?

16 A. Well, at first we didn't know, but ultimately it turned out
17 to be David Levy and Fotis.

18 Q. Now, we'll get to that in a moment. Who initially was
19 going -- to your understanding was going to provide the
20 funding?

21 A. I don't know if there was funding initially that provided,
22 but there was at least one investor that was introduced to me
23 whose name I forget now, someone from Florida who had put in
24 some money, some initial seed money.

25 Q. And what happened to that initial seed money?

D38LLEV4

Gang - direct

1 A. I think it was expended in the setting up of the company.
2 So, it was not sufficient.

3 Q. And, again, did there come a time when you learned that Zev
4 had met David Levy in connection with his efforts to find
5 additional funding for the company?

6 A. Yes.

7 Q. When is the first time you met David Levy?

8 A. Sometime in the winter of 2007, I think, early 2007.

9 Q. And who if anyone was with him when you met him?

10 A. So Fotis was there, and I'm not a hundred percent sure
11 whether Zev was there or not.

12 Q. Where did you meet?

13 A. Few blocks from my office in Los Angeles at a restaurant.

14 Q. And what if anything did David and Fotis say they were
15 prepared to do for the company at that meeting?

16 A. They were prepared to invest in the company.

17 Q. How specific were they at that initial meeting?

18 A. I think pretty specific. They said they had the funds with
19 which to invest and that they were interested. I think the
20 purpose of my meeting them was to describe the technology and
21 the concept of the company and the interaction between the
22 patients, physicians, and the company and what the business
23 plan would be in that respect.

24 Q. Now, did you discuss exactly how much funding they would be
25 prepared to provide at that initial meeting?

D38LLEV4

Gang - direct

1 A. I don't recall.

2 Q. And following that meeting, what if any contact with them
3 did you have over the next several weeks?

4 A. I think there was several phone calls and there was one
5 more face-to-face meeting in my office a few weeks later.

6 Q. And during those subsequent phone calls and face-to-face
7 meetings, what specifically did David say that he and Fotis
8 were willing to give the company in the way of initial
9 financial support?

10 A. There was going to be about a million dollars. Ultimately
11 I think it became a million point two.

12 Q. And what else did David Levy say he was prepared to do for
13 the company, if anything, beyond that 1.2 million?

14 A. They were going to support the company. This was their
15 investment.

16 Q. And what did you understand that to mean?

17 MR. SHARGEL: Objection.

18 THE COURT: Overruled.

19 Q. What did you understand "support the company" to mean
20 beyond the 1.2 million?

21 A. That this was their investment. If more funds were needed
22 that they would back us up.

23 Q. Now, based on your dealings with David Levy and Fotis, what
24 led you to the conclusion that they could actually deliver on
25 this commitment?

D38LLEV4

Gang - direct

1 A. Well, I didn't see their bank accounts, no. But they spoke
2 and they said that they had business experience and that they
3 had the money. Zev told me he had visited David's home.

4 MR. SHARGEL: Objection to what Zev told him.

5 THE COURT: Sustained.

6 Q. Did there come a time when you were given a draft of a
7 letter of intent concerning the deal?

8 A. Yes.

9 Q. What did you do when you saw the draft?

10 A. I read it. I think I made some comments on it and,
11 ultimately, it was accepted.

12 Q. Now, what was your understanding of what David and Fotis
13 would get in return for this investment, this initial
14 investment?

15 A. Shares in the company that was going to be formed.

16 Q. And what did you understand you would be getting once this
17 company was formed?

18 MR. SHARGEL: Objection to the foundation.

19 THE COURT: Give a little more foundation, Mr. Master.

20 Q. Well, you just testified that you understood David and
21 Fotis would be getting shares in the company in return for
22 their initial investment.

23 What were you intending to do for this company once it
24 was formed?

25 A. What was my role in the company?

D38LLEV4

Gang - direct

1 Q. Yes.

2 A. Right. I was going to be the medical director of the
3 company, so I would be in charge of making sure that the
4 medical aspects of it functioned appropriately.

5 Q. And what if any role would you have on the company's board
6 of directors?

7 A. A seat on the board.

8 Q. And what, among other things, were you expecting to receive
9 in exchange for the services you were going to be providing to
10 that company?

11 A. I was promised shares in the company as well.

12 Q. And what kind of shares did you understand that you would
13 be receiving based on your conversations with David Levy?

14 A. Restricted shares, shares that couldn't be traded for a
15 period of time.

16 Q. And did you -- what was your understanding at the time of
17 how long you would be unable to trade your shares?

18 A. About one year.

19 Q. Now, what kind of shares did David Levy tell you that he
20 and Fotis would be getting?

21 A. Same shares, restricted shares.

22 Q. And what did he say about how your shares would be treated
23 vis-a-vis his shares and Fotis's shares?

24 A. Exactly the same way.

25 Q. And what was your understanding of how this transaction

D38LLEV4

Gang - direct

1 would occur?

2 A. Well, I was introduced to the concept of a reverse merger,
3 which I did not know much about before. So an existing
4 company -- do you want me to speak about this?

5 THE COURT: Yes.

6 THE WITNESS: Certainly not my area of expertise.

7 THE COURT: He asked you to give us the best of your
8 understanding, Doctor.

9 THE WITNESS: OK.

10 A. An existing company that was on the stock exchange on the
11 bulletin board would act as a recipient or as a shell for into
12 which our company would fold and the shares would be named
13 Cardiac Network, which was the name of our company, and that
14 company would become listed instead of that company on the
15 bulletin board.

16 Q. Now, how much experience, if any, did you have with taking
17 companies public prior to this?

18 A. None.

19 Q. Now, who drafted the documents related to this merger?

20 A. I didn't and Zev didn't, so I presumably --

21 MR. SHARGEL: Excuse me. I object to that,
22 "presumably."

23 Q. Who provided you with copies of the documents to be
24 reviewed?

25 A. David and Fotis gave us the copy.

D38LLEV4

Gang - direct

1 Q. Did you retain separate counsel in reviewing the documents?

2 A. No.

3 Q. Now, in these discussions about the merger, how if at all
4 did David say that he would be raising money for the company?

5 A. He didn't. He said he was investing.

6 Q. And so what was your understanding of what he meant by when
7 he said he would be investing?

8 A. I assumed that Fotis and David had funds.

9 MR. SHARGEL: I object to the "assumed."

10 THE COURT: Doctor, you got to tell us what you know.
11 You can't be guessing and assuming. If you know, you can say.
12 If you don't know, then you don't know.

13 All right, Mr. Master.

14 MR. MASTER: Yes, your Honor.

15 THE WITNESS: I assume that I don't know.

16 MR. SHARGEL: All right. Got me.

17 THE COURT: Mr. Shargel doesn't object to that.

18 Q. How many shares did you receive as part of the merger?

19 A. Something around 5 million.

20 Q. And how much did you receive from the company?

21 A. I think something to that order, right.

22 Q. And how many shares, if any, did you receive from David?

23 A. 500,000.

24 Q. And what was the status of the shares you received from the
25 company, that is, restricted versus unrestricted?

D38LLEV4

Gang - direct

1 A. They were all restricted.

2 Q. So the shares you received from David were restricted as
3 well?

4 A. Yes.

5 Q. Now, what -- you just stated that in your prior testimony
6 that you were going to be medical director of this company.
7 Did you in fact serve in that capacity?

8 A. Yes, I did.

9 Q. And what if any compensation did you agree to receive for
10 those roles on the board and as medical director?

11 A. Sometime after the company was formed, I was given an
12 agreement or I was offered an agreement to get \$5,000 a month
13 for that role serving as medical director.

14 Q. I'm going to show you what's been marked for identification
15 as 201-29. Do you recognize that document?

16 A. Yes.

17 Q. How do you recognize it?

18 A. It's got my electronic signature at the bottom, an email.

19 MR. MASTER: Your Honor, at this time the government
20 offers 201-29.

21 MR. SHARGEL: No objection.

22 THE COURT: 201-29 is received in evidence.

23 (Government's Exhibit 201-29 received in evidence)

24 Q. If you can just start at the bottom. Do you recall
25 discussing with David Levy and Zev your expectations of

D38LLEV4

Gang - direct

1 receiving money from Cardiac Networks for the services you were
2 intending to provide?

3 A. Yes.

4 Q. And what was David Levy's reaction in response to your
5 request for funding or, I'm sorry, for compensation from the
6 company?

7 A. I don't recall that he had any specific response.

8 Q. Well, do you recall that he opposed it?

9 A. No, he did not oppose it.

10 Q. And for how long did you actually draw that \$5,000 monthly
11 compensation?

12 A. A few months.

13 Q. And then what happened?

14 A. Then the company ran out of funds and I stopped getting it.

15 Q. Did you continue to provide unpaid services for the company
16 after that?

17 A. Yes.

18 Q. Now, with respect to the money that was brought in as a
19 result of this investment from David Levy and Fotis, what did
20 you do with that money -- what did the company do with the
21 money?

22 A. What did the company do. Well, immediately there were
23 large expenses in buying the equipment that I started
24 describing to you, the actual monitors, the work stations. We
25 had to hire technicians. We had to train the technicians. We

D38LLEV4

Gang - direct

1 had to pay them while they were studying to pass the California
2 state exam for medical ECG technicians. We had to pay rent to
3 an office, salaries to secretarial help, and to the chief
4 technician who was in charge of the other technicians.

5 Q. And for how many hours a day did you have to keep this
6 operation?

7 A. Twenty-four hours a day, seven days a week in order to
8 comply with regulations.

9 Q. And for how long did it take you to get your Medicare
10 number?

11 A. Longer than expected. It took close to a year.

12 Q. And what effect did that have on the company's business?

13 A. Well, it was stultifying because where you thought you
14 could provide service to the doctors without a Medicare
15 license, you can't. So we didn't really operate as a
16 functional company for a lot longer than anticipated.

17 Q. And even without a Medicare number, what sort of expenses
18 did the company have to incur?

19 A. Well, the technicians needed to be paid, salaries needed to
20 be paid, rent needed to be paid, those sorts of things, and the
21 equipment purchased early on, wiring of the office for this
22 kind of a system.

23 Q. Now, what was the status of the company's finances by early
24 2008?

25 A. Not very good.

D38LLEV4

Gang - direct

1 Q. All right. Let's go back to the summer of 2007. At that
2 time, what if anything were you doing to check the price of
3 Cardiac Network's stock?

4 A. Occasionally checked it on the internet.

5 Q. And did there come a time when you noticed the price of
6 Cardiac Network stock start to increase significantly?

7 A. I was about to change my name to Donald Trump. Yes, the
8 stock price went up, yeah.

9 Q. Well, during the summer of 2007, what if any ability did
10 you have to sell any of your Cardiac Network shares?

11 A. None. They were restricted shares.

12 Q. How high do you remember the stock going?

13 A. Over \$3.

14 Q. And what happened, what do you remember happening to the
15 stock after it reached that peak of over \$3?

16 A. It went down.

17 Q. How far did it go down?

18 A. To below a dollar, ultimately to pennies.

19 Q. And during this time, what did you observe happening to the
20 trading volume or the number of shares being exchanged?

21 A. To the extent that I followed it, there were days when
22 there were many millions of shares traded, other days when
23 there weren't.

24 Q. Now, did there come a time when you asked David Levy
25 whether he or Fotis were selling their shares during this

D38LLEV4

Gang - direct

1 period of increased price and volume?

2 A. Yes.

3 Q. And what did David Levy tell you in response to your
4 questions?

5 A. We have the same restricted shares you do.

6 Q. And what did he say about whether he was selling any of his
7 shares?

8 A. Not selling.

9 Q. Did there come a time when you asked Fotis the same
10 question?

11 A. Yes.

12 Q. What was his answer?

13 A. Multiple times the same answer.

14 Q. Which is?

15 A. We all have restricted shares. Doc, we're all in the same
16 boat.

17 Q. Now, what reason if any did David give you for the movement
18 in the trading price and volume that you observed?

19 A. It was either David or Fotis, I can't be a hundred percent
20 sure.

21 MR. SHARGEL: Excuse me, I object to it.

22 THE COURT: Overruled.

23 What were you told?

24 THE WITNESS: I was told that there were people who
25 held the initial shares from the company -- Triten Energy was

D38LLEV4

Gang - direct

1 it -- the name of the company that was the shell into which
2 Cardiac Network became integrated with -- sorry, I ended the
3 sentence with a preposition -- and that there were people who
4 had freely traded shares that were able to sell their shares at
5 these -- there were people who had nonrestricted shares.

6 Q. Who were those people?

7 A. As I understood it, they were the initial shareholders of
8 the prior company who still had shares.

9 Q. And as time passed and as the company's finances worsened,
10 did there come a time that you returned to that same topic of
11 conversation with David Levy?

12 A. Yes.

13 Q. And what did you ask David Levy as the company's finances
14 were declining and what did he say in response?

15 A. I made multiple phone calls in trying to get them to
16 support their investment in the company because the company was
17 essentially had no money. The company was still a good
18 company. The concept was still a good concept. The technology
19 was still state-of-the-art technology, but the company couldn't
20 pay its rent. I asked him to invest more money to keep the
21 company afloat until we could execute on the business plan.

22 Q. And what was his answer?

23 A. Don't have money. I already put in a million point two, we
24 did. We don't have any money. We can't invest any more.

25 Q. And when if ever did you return to this topic of whether

D38LLEV4

Gang - direct

1 David Levy was selling any of his shares in the company?

2 A. I'm sorry?

3 Q. In the context of this conversation, did there come a time
4 when you asked David Levy whether he was making money off the
5 sale of shares?

6 MR. SHARGEL: Object to the form of the question.

7 THE COURT: Overruled.

8 A. Yeah. More than a year after the company was formed, you
9 know, officially, to my understanding, the restriction of the
10 shares would no longer be valid. When I asked for more money
11 for the company to survive, I think I asked on multiple
12 occasions are shares being sold and can we have money to
13 support the company and keep it alive.

14 Q. And what did David Levy tell you in response?

15 A. That shares are not being sold.

16 Q. And how about whether there were -- whether he had any
17 money left to invest in the company?

18 A. None.

19 Q. And what did Fotis tell you in response to those same
20 questions?

21 MR. SHARGEL: Objection.

22 THE COURT: Overruled.

23 A. Same answer. We put in a million two into a company. The
24 company is not doing well. We're not going to put any more
25 money into it. We have no money.

D38LLEV4

Gang - direct

1 Q. What did you try to do to get financing for this company
2 after David Levy and Fotis said they had no more money to give?

3 A. Well, various other investors were sought and then various
4 other people got involved in trying to invest in the company.
5 It was not successful.

6 Q. And did there come a time when you started taking money out
7 of your own savings to help support the company?

8 A. Yes.

9 Q. How much money did you put in to help support the company?

10 A. Somewhere between 40 to \$50,000.

11 Q. And, again, during this time, what happened to the \$5,000 a
12 month that you were supposed to be receiving for those services
13 that you were providing to the company?

14 A. It had long since stopped.

15 Q. And at that time who if any of the initial, who else if any
16 of the founders started putting in their own savings to help
17 the company?

18 A. Eric Buchwald put in money as well, his own personal money.

19 Q. And during the period of your involvement in the Cardiac
20 Networks, how much additional money if any did David Levy put
21 into the company?

22 A. I recall ten to \$20,000 or so.

23 Q. During the course of your work with Cardiac Networks, what
24 if any involvement did you have in approving press releases?

25 A. I didn't approve them, but I had a chance to see a couple

D38LLEV4

Gang - direct

1 of them sent to me by email, a couple of them.

2 Q. And when you did see the certain press releases, what did
3 you look for?

4 A. For what I thought was a realistic representation of what
5 we were doing.

6 Q. And what would happen if you saw something that you thought
7 was unrealistic?

8 A. I made some changes, as I recall, but I don't remember the
9 specifics.

10 Q. And when you did make some changes or proposed changes,
11 what if any knowledge do you have about whether those changes
12 made their way into the final press release?

13 A. I don't know.

14 Q. And what if any involvement did you have with any
15 promotions by third parties concerning Cardiac Network's stock?

16 A. None. We did do one promotional video that I participated
17 in, a video that was shown on the internet about the technology
18 of the company.

19 Q. Was that in the context of promoting the stock or promoting
20 the actual business?

21 A. No, promoting the company, the services offered by the
22 company.

23 Q. When if ever did Donna Levy -- withdrawn.

24 Who to your understanding was responsible for press
25 releases for this company?

D38LLEV4

Gang - direct

1 A. Donna, among others.

2 Q. And when if ever did Donna check medical facts or figures
3 with you as far as you can recall?

4 A. I don't remember.

5 Q. Well, do you remember any occasion on which Donna Levy
6 checked medical facts and figures with you?

7 A. No, not specifically.

8 Q. Now, how much gross revenue did you think that the company
9 realistically could earn if you carried out your business plan
10 successfully?

11 A. Between 50 to a hundred million a year I thought was
12 reasonable based on what at least one other company that is
13 successful is doing right now.

14 Q. I'd like to direct your attention to the summer of 2008.
15 Did there come a time when you were presented with a proposal
16 from an entity called American Marketing Complex?

17 A. So far I've got a blank screen.

18 Q. There's no exhibit before you. Let me ask the question
19 again.

20 In the summer of 2008 did there come a time when you
21 were presented with a proposal from an entity called American
22 Marketing Complex?

23 A. Norman, yes. Norman someone.

24 Q. And what do you remember about it?

25 A. I remember actually not understanding it very well. We

D38LLEV4

Gang - direct

1 were going to get some kind of marketing credits in return for
2 shares from the company and that would somehow translate into
3 money for the company and how we went from point A to point B
4 wasn't clear to me.

5 Q. And what if anything did the company do to vet this
6 proposal from American Marketing Complex?

7 A. We hired or the company hired a securities attorney here in
8 New York.

9 Q. And what was the result of that review by the securities
10 attorney?

11 MR. SHARGEL: I object to that.

12 THE COURT: Overruled.

13 MR. SHARGEL: Hearsay objection.

14 THE COURT: I know. It's overruled.

15 A. We were told that it was something that we should pursue or
16 that it was a reasonable thing to do.

17 Q. And what was your understanding of what happened with that
18 proposal?

19 A. I think shares were authorized to Norman King but funds
20 were never received. The company never received funds.

21 Q. And what happened soon after that deal was signed?

22 A. The company went, you know, belly up. Well, not
23 completely, but became dysfunctional.

24 Q. And what happened to Zev Helfer soon after the deal was
25 signed?

D38LLEV4

Gang - direct

1 A. He was shown the door.

2 Q. What if any involvement did you have in showing Zev Helfer
3 the door?

4 A. None.

5 Q. And what if any continued involvement did you have in the
6 company after Zev was forced out?

7 A. Zev's replacement asked me to stay on and I stayed on for a
8 couple more months and then I resigned.

9 Q. And how much revenue was the company taking in when you
10 resigned?

11 A. To my knowledge, none.

12 Q. And what's the reason that you resigned?

13 A. I was unhappy with the direction of the company and thought
14 there was more harm than good coming to me from being a part of
15 that company.

16 Q. After you left, did there come a time when you and Zev
17 tried to buy the company back from David?

18 A. Yes. In an attempt to keep the company viable, Zev found
19 an investor or investors who said they would possibly consider
20 investing in Cardiac Network.

21 MR. SHARGEL: I object to what was said.

22 THE COURT: That's hearsay, Mr. Master.

23 MR. MASTER: Yes, your Honor.

24 Q. If you could just answer, did there come a time when you
25 and Zev tried to buy the company back?

D38LLEV4

Gang - direct

1 A. So the answer is yes.

2 Q. And what happened to that proposal?

3 A. It was rejected by David and Fotis.

4 Q. Now, what happened to those millions of shares in
5 restricted stock that you held in Cardiac Networks?

6 A. Well, about two years later they became unrestricted and I
7 got a certificate bearing some number of shares which I gave a
8 brokerage house here in New York.

9 Q. And what did you do after the shares arrived in the
10 brokerage house?

11 A. I told the broker to sell enough shares that would make up
12 for the loss that I had incurred and eventually he did. So,
13 eventually I broke even.

14 Q. When you say break even, what do you mean?

15 A. Eventually I netted somewhere between 40 to \$50,000 from
16 shares being sold over the period of a few months, I think.

17 Q. And when if ever did you get compensated for the unpaid
18 labor that you've given to that company?

19 A. No, I did not. I meant out-of-pocket money that I'd spent.

20 Q. And back to the question about trying to buy the company
21 back, approximately when or how long after Zev was forced out
22 of the company did you and Zev try to buy the company back?

23 A. Within six to 12 months, I think.

24 Q. And why did you want to buy the company back?

25 A. Well, I still believed in the concept and I still believe

D38LLEV4

Gang - direct

1 in the technology. The technology and the concept are very
2 viable, so I thought we still might be able to make a go of it.

3 Q. And were you able to sell all of your shares of Cardiac
4 Networks when you gave those shares to the broker?

5 A. No, I didn't want to and I didn't. Bottom line is I
6 didn't.

7 Q. And what is the status of your remaining holdings in
8 Cardiac Networks?

9 A. I think they're worth a few pennies. They show up on my
10 monthly statement, but they're essentially worthless.

11 MR. MASTER: No further questions.

12 THE COURT: Mr. Shargel.

13 Would the jury like to take the afternoon recess now?

14 Mr. Shargel.

15 MR. SHARGEL: I would like to.

16 THE COURT: You would. Why don't we take a 15-minute
17 break.

18 (Recess)

19 THE COURT: Mr. Shargel.

20 MR. SHARGEL: Thank you, Judge.

21 CROSS-EXAMINATION

22 BY MR. SHARGEL:

23 Q. Mr. Gang, good afternoon.

24 A. Good afternoon.

25 Q. My name is Jerry Shargel. I'm David Levy's lawyer in this

D38LLEV4

Gang - cross

1 matter.

2 You met David Levy for the first time in California?

3 A. Yes.

4 Q. In fact, you had a meeting in Beverly Hills, is that where
5 your office is?

6 A. Yes.

7 Q. And it was at a restaurant you met him for the first time?

8 A. Yes.

9 Q. And at that restaurant you discussed the prospective
10 relationship with David Levy, right?

11 A. Yes.

12 Q. And you had heard about David Levy from your friend,
13 Mr. Helfer, right?

14 A. Correct.

15 Q. And after the meeting, when in relation to the meeting in
16 Beverly Hills did the term sheet get generated?

17 A. I can't --

18 Q. Approximately. I'm not trying to pin you down --

19 A. OK.

20 Q. -- a month or day. But approximately?

21 A. A few weeks.

22 Q. A few weeks later the term sheet arrived, right?

23 A. Yes.

24 Q. And you are a physician, but you've had, as I think you
25 described, business relationships as well, right?

D38LLEV4

Gang - cross

1 A. Limited.

2 Q. But some business relationships, right?

3 A. Yes.

4 Q. You know, I mean you've been defining terms like reverse
5 merger and as you understood it and restricted stock. You
6 learned that over the years, right?

7 A. Yes.

8 Q. And over the years you probably entered into many
9 contracts, right?

10 A. No, actually very few.

11 Q. There were inventions with your name on it, you told us
12 about that, right?

13 A. Yes.

14 Q. And you had other business relationships in connection with
15 those ventures or not?

16 A. Yes, one.

17 Q. And so --

18 A. I was quibbling with the word many. You said many.

19 Q. To remove the quibble, you know what a contract is, right?

20 A. Yes.

21 Q. And you know that when parties sign a contract, they are
22 bound by the terms, right?

23 A. Yes.

24 Q. And you know that the contracts supersede any side
25 agreements or side deals, right?

D38LLEV4

Gang - cross

1 MR. MASTER: Objection.

2 Q. If you know.

3 THE COURT: Overruled. If you know.

4 A. Yes.

5 Q. So let me show you what's been marked I believe -- in
6 evidence, not marked, well, marked in evidence as 201 I think
7 it's 38, the confidential term sheet. This is a document
8 that's already in evidence. We'll have it up on the screen in
9 a moment. We have it as A5, Jen.

10 All right. So you recognize this document, don't you?

11 A. Yes.

12 Q. And you see that and let me cut right to the chase.

13 You see that in the transaction summary, do you see
14 that this transaction, this transaction shall consist of two
15 separate financings. The first financing will be a short-term
16 bridge loan, \$200,000, and the second financing transaction
17 will be a private placement of up to \$1 million.

18 Right?

19 A. Yes.

20 Q. And this was expected of Fotis and Mr. Levy to provide that
21 financing, right?

22 A. Yes.

23 Q. And clearly it says up to \$1 million, right?

24 A. Yes.

25 Q. Have you, sir, ever seen a document, an email or any other

D38LLEV4

Gang - cross

1 paper, that suggests that Mr. Levy was promising more than
2 \$1 million?

3 A. Document?

4 Q. Yes, a document.

5 A. No.

6 Q. Email?

7 A. Conversations, yes.

8 Q. Contract?

9 A. Conversations, yes; document, no.

10 Q. Conversations in Beverly Hills?

11 A. No, by telephone.

12 Q. Let me ask you a question. If it turned out after a period
13 of time -- and you told us on direct examination that the
14 company received the \$1.2 million, right?

15 A. Yes.

16 Q. And even some more was invested, small amounts as you
17 remember after that, correct?

18 A. Yes.

19 Q. You have to answer orally.

20 A. Yes. The answer is yes.

21 Q. But what if -- and you were asked several times by
22 Mr. Master about what your understanding was of conversations
23 that you had with David Levy, right?

24 A. Yes.

25 Q. What was your understanding of how much money David Levy

D38LLEV4

Gang - cross

1 would be obligated to put in addition to \$1.2 million -- I'll
2 say that for rough number, right -- what was your understanding
3 of what he was required to put into the company if he hated,
4 despised, and loathed Zev Helfer after the initial investment,
5 what was your understanding there?

6 A. His hating, despising, and loathing of Zev Helfer never
7 came up.

8 Q. That wasn't my question. I said did you have any
9 understanding, if he were disappointed with Helfer's style of
10 management -- I'll withdraw that question. I'll put another
11 one.

12 What if he lost confidence in Zev Helfer and you, was
13 he still obligated under some contract to just keep feeding
14 money into this business; is that your understanding?

15 A. You're waiting for my answer?

16 Q. Yes, I'm waiting for your answer.

17 A. The answer is no. A bad investment is a bad investment.
18 We had verbal assurances, but I had no written agreement that
19 he would invest more.

20 Q. And even with verbal assurances, he had the right like any
21 of us in this courtroom to change his mind, right?

22 A. Yes.

23 Q. Because there was nothing like that contract that bound him
24 to supply more, right?

25 A. There was no other contract.

D38LLEV4

Gang - cross

1 Q. Now, you told us the number of times in response to
2 questions, look, you're a well-known and respected
3 cardiologist. Business is not your thing. So that was the
4 import of your testimony on direct. Right?

5 A. Yes.

6 Q. But after this term sheet -- there came a time you saw this
7 term sheet, right?

8 A. Yes.

9 Q. And you were very interested. This was a business venture.
10 You were very interested in the outcome. Right?

11 A. Yes.

12 Q. The outcome always starts with the first step and the first
13 step is a contract of sorts like this term sheet, right?

14 A. Yes.

15 MR. MASTER: Objection.

16 THE COURT: Overruled.

17 MR. SHARGEL: Made me lose my train of thought but I
18 got it back.

19 THE COURT: Good. Hang on to your hats.

20 Q. Let me show you what's been received in evidence as we
21 have --

22 MR. SHARGEL: It's A6, Jen.

23 At a later time we'll put on the record the Government
24 Exhibit number is.

25 Q. This is a an email from you, EPGang@aol, that's accurate?

D38LLEV4

Gang - cross

1 A. That's me.

2 Q. And you're familiar with this document, right?

3 A. Yes.

4 Q. Because even in preparation for your testimony you reviewed
5 it, right?

6 A. Yes.

7 Q. And the prosecutors -- I know it goes back to 2007, but the
8 prosecutors -- nothing wrong with it -- but the prosecutors
9 showed you the document again and prepared your testimony,
10 right?

11 A. Yes.

12 Q. And you have a full recollection of this event, sending
13 this email, right?

14 A. Yes.

15 Q. And are all six of these issues with respect to the term
16 sheet your original ideas or did you show it to someone who had
17 perhaps more business experience?

18 A. So that's a good question. You've heard the expression of
19 doctor playing God. I may have been doctor playing attorney
20 here.

21 I can't recall exactly how I came up with all these
22 six points. I may have shown it to an attorney friend. I just
23 simply cannot recall whether I came up with these points or
24 showed it to someone.

25 Q. You said on direct examination that you didn't consult a

D38LLEV4

Gang - cross

1 lawyer, that you just relied on what you were being told by
2 Mr. Levy and Fotis, right?

3 A. We did not retain an attorney for this transaction.

4 Q. Did David Levy ever say, Doctor, don't get a lawyer
5 whatever you do, anything like that in words or substance?

6 A. No.

7 Q. Did he ever say it's not a good idea, you just rely on us.
8 Go don't go to a lawyer. He didn't say anything like that?

9 A. I don't remember him saying anything like that.

10 Q. By the way, one more exhibit I want to show you and it's
11 this. This is A38.

12 MR. SHARGEL: This is another document, Judge, it's in
13 evidence as a Government Exhibit and we'll supply the
14 appropriate number.

15 THE COURT: Thank you.

16 MR. SHARGEL: Can I see the bottom part.

17 Q. So this is an email that you write in May 29, 2007. And it
18 says thanks for sending me the employment agreement. Before
19 signing it, I would like to request that the description of the
20 agreement be changed to a long-term consulting agreement
21 instead of employment or something similar to that, so that I
22 have no conflicts with my current cardiology partnership.

23 Do you see that?

24 A. Yes.

25 Q. So what conflicts might you have had with your current

D38LLEV4

Gang - cross

1 cardiology partnership?

2 A. Well, just the terminology. If I'm already a partner
3 there, I don't want to be employed by someone else. But we all
4 have consultancies that we do. So I think our group's attorney
5 suggested that I use the word consulting.

6 Q. You went to an attorney with respect to this?

7 A. We have an attorney, the group has an attorney.

8 Q. Well, was this because you didn't want to share any of your
9 income or hopeful wealth from Cardiac Network with your
10 partners?

11 A. We each have outside interests.

12 Q. If it's an outside interest like a consultancy, you don't
13 have to share it with your partners, right?

14 A. That's right.

15 Q. If it's employment, that's a different story, right?

16 A. We're not supposed to be doing what we're doing during the
17 daytime.

18 (Continued on next page)

19

20

21

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23

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D38rlev5

Gang - cross

1 Q. You said a couple of times that you were led to believe or
2 you were told -- actually, forget led to believe -- that you
3 were told that David Levy had restricted shares, right?

4 A. That's correct.

5 Q. But you knew, you said this on direct examination, that
6 there were shares that came from the shell company, the name of
7 which you didn't recall, but that shares came from the shell
8 company that were being held, correct?

9 A. Either David or Fotis gave me that explanation, yes.

10 Q. You didn't remember the name. Does the name Caspian Energy
11 ring a bell?

12 A. That's right, it was an energy company.

13 Q. That energy company, Caspian Energy, was the company that
14 was merged with Cardiac to form the Cardiac public company,
15 Cardiac Network, correct?

16 A. Yes.

17 Q. Did you know, sir, at the time that the person who acquired
18 the shell and held the unrestricted shares was David Levy?

19 A. No.

20 Q. You sold your shares and you got \$50,000 at the end of the
21 day, you realized \$50,000 from the sale of shares, right?

22 A. More or less.

23 Q. You said that that covered what you had taken out of
24 pocket, what you had put in, right?

25 A. Yes.

D38rlev5

Gang - cross

1 Q. You were asked questions on direct examination about
2 American Marketing, right?

3 A. Yes.

4 Q. What is your understanding of this relationship with
5 American Marketing?

6 A. It was never brought to fruition, as far as I know.

7 Q. You didn't get a dollar out of American Marketing, right?

8 A. That's correct.

9 Q. The company didn't get a dollar out of American Marketing,
10 right?

11 A. As far as I know.

12 Q. But you know that 12 million shares were issued and given
13 to American Marketing, isn't that right, you knew that?

14 A. I knew that was being discussed, yes.

15 Q. And you knew that the company issuing 12 million additional
16 shares would dilute the stock of the company and render it less
17 valuable?

18 A. Yes.

19 Q. You knew that?

20 A. The company was in dire straits at the time, yes.

21 Q. Have a good trip back to LA.

22 A. Thank you.

23 MR. SHARGEL: That's all I have, Judge.

24 THE COURT: Thank you, Mr. Shargel.

25 CROSS-EXAMINATION

D38rlev5

Gang - cross

1 BY MR. SREBNICK:

2 Q. Good afternoon, Dr. Gang. My name is Howard Srebnick. I
3 only have a few questions. I don't believe I have any
4 documents to show you. What I would like to ask you is you
5 discussed with the jury a projection that you thought might be
6 reasonable for the product that Cardiac would be selling. I
7 believe you were projecting perhaps revenues upwards of
8 50 million, maybe even a \$100 million a year?

9 A. Yes.

10 Q. What time frame did you think it would take for Cardiac
11 Network to achieve between 50 and a hundred million in sales?

12 A. I don't have a time frame in mind.

13 Q. When did you first become associated with the product that
14 Cardiac Network was attempting to market?

15 A. Around that same period of time, 2007, 2006-2007 time
16 frame.

17 Q. Do you recall when you were first introduced to the event
18 monitor, the heart monitor that we have heard a bit about, the
19 actual product itself?

20 A. The event monitor has been around for decades. Various
21 iterations of it I have known for years.

22 Q. The relationship with a company in Israel, I believe it is
23 Aerotel?

24 A. Aerotel, yes.

25 Q. Was Aerotel going to be the manufacturer of the product

D38rlev5

Gang - cross

1 that your company then would sell here in the USA?

2 A. Aerotel was manufacturing it for years already and selling
3 it worldwide.

4 Q. Could you tell us what was the business model that you were
5 proposing that you thought would generate upwards of a hundred
6 million in sales? What was it that was going to be new that
7 would create this kind of revenue?

8 A. There was a need for that. There still is a need for that.
9 Many doctors use it. We use similar products in our practice
10 every day, different companies. I felt that the market was
11 underpenetrated, that with proper education of physicians,
12 general practitioners, internists, cardiologists, more people
13 would utilize this service and that the market was there that
14 we could participate in it.

15 Q. Did you say that you have learned from other companies that
16 offer similar product that those companies, based on your
17 research, could generate revenues of 50 to 100 million?

18 A. Yes.

19 Q. So you thought that Cardiac Network could participate in
20 the enterprise of this product and compete with those companies
21 and generate similar revenues, right?

22 A. Yes.

23 Q. How many millions of Americans could be potential customers
24 for this product?

25 A. I don't know the exact number, but many.

D38rlev5

Gang - cross

1 Q. It would be in the millions, right?

2 A. Millions, yes.

3 Q. Millions of Americans suffer from heart disease?

4 A. Yes, and the population is getting older.

5 Q. Is it one of the number one causes of death in the United
6 States?

7 A. Yes.

8 Q. Do you believe that a product like this could save lives?

9 A. Yes.

10 Q. It could alert a patient to a scenario, an event in his
11 body that could be a heart attack, and it would allow him to
12 communicate that event to a physician rapidly? Is that the
13 idea?

14 A. That's the purpose.

15 MR. SREBNICK: If I could have a moment, Judge.

16 Q. Do you think a product like this could improve a patient's
17 chance of surviving a heart attack?

18 A. Possibly.

19 Q. Was the idea that within minutes it could determine whether
20 the person was actually suffering a heart attack versus
21 indigestion?

22 A. That's not its strong suit. The strong suit of this
23 technology is patients who have irregular heart rates, rapid
24 heart rates, lightheadedness, if they can transmit or be
25 monitored this way, you could potentially avoid an emergency

D38rlev5

Gang - cross

1 room visit or make the diagnosis and send someone to the
2 emergency room.

3 Q. But it would be fair to say that this product was offering
4 like a detection service that could dramatically improve a
5 patient's chances of surviving a heart attack?

6 A. Yes.

7 Q. Could it help patients determine within five minutes if
8 they were having a heart attack or a potential Cardiac problem
9 so they could obtain quick treatment?

10 A. Yes. Heart attacks are not diagnosed just that way, but it
11 could help in it, yes.

12 MR. SREBNICK: I won't publish this document now,
13 Judge. I'll do it later. Thank you very much.

14 MR. MASTER: No redirect, your Honor.

15 THE COURT: Dr. Gang, thank you very much.

16 (Witness excused)

17 THE COURT: Mr. Master, next witness.

18 MS. COHEN: Your Honor, the government calls Dr. David
19 Champion.

20 DAVID CHAMPION,

21 **called as a witness by the government,**

22 **having been duly sworn, testified as follows:**

23 THE CLERK: Could you please say and spell your name
24 for the record.

25 THE WITNESS: David M. Champion. D-A-V-I-D,

D38rlev5

Champion - direct

1 C-H-A-M-P-I-O-N.

2 THE COURT: Doctor, please sit down, make yourself
3 comfortable. Speak right into the microphone.

4 All right, Ms. Cohen.

5 DIRECT EXAMINATION

6 BY MS. COHEN:

7 Q. Where do you live?

8 A. I live in New Port Richey, Florida.

9 Q. What do you do for a living?

10 A. I'm a general dentist.

11 Q. Do you know David Levy?

12 A. Yes, ma'am.

13 Q. What is your relationship with him?

14 A. Close friend.

15 Q. How long have you been close friends with David Levy?

16 A. Approximately 15 years.

17 Q. Do you know his sister, Yael Tal Levy?

18 A. Yes, ma'am.

19 Q. Where does she reside?

20 A. I believe she lives in Israel.

21 Q. What does she do in Israel?

22 A. I believe she's a homemaker.

23 Q. Do you know Donna Levy?

24 A. Yes, ma'am.

25 Q. What is your relationship with Donna Levy?

D38rlev5

Champion - direct

1 A. Close friend.

2 Q. How long have you been close friends with Donna Levy?

3 A. The same, about 15 years.

4 Q. In addition to being close friends with Donna and David
5 Levy, do you do dental work for them?

6 A. Yes, ma'am.

7 Q. Have you ever heard of the name of a company called Cardiac
8 Networks Inc.?

9 A. No, ma'am.

10 Q. Have you ever heard the name of a company called Banneker
11 Inc.?

12 A. No, ma'am.

13 Q. Do you own any shares in a company called Cardiac Networks?

14 A. No, ma'am.

15 Q. Do you own any shares in a company called Banneker Inc.?

16 A. No, ma'am.

17 Q. Do you own shares in any publicly traded company?

18 A. No, ma'am, other than my pension plan at my office.

19 Q. What is your knowledge about shares in the marketplace and
20 how they are issued and traded?

21 A. Zero, unfortunately.

22 Q. What discussions have you had with David Levy at any time
23 about shares in any stock?

24 A. There was a discussion about giving me some shares. What
25 stock, I don't know.

D38rlev5

Champion - direct

1 Q. What did David Levy tell you about giving you some shares?

2 MR. SHARGEL: Objection. Relevance.

3 THE COURT: Overruled.

4 A. I'm sorry. Could you repeat that?

5 Q. What did David Levy say to you about giving you shares in
6 some stock?

7 A. He just said that he was going to give me some shares and
8 to sign a paper of some sort.

9 Q. What type of paper did David Levy ask you to sign?

10 A. Unfortunately, I don't know.

11 Q. Did you sign the piece of paper that David Levy gave you?

12 A. Yes.

13 Q. Do you know what company it related to any way?

14 A. No, ma'am.

15 Q. Did you get shares in any company from David Levy?

16 A. No, ma'am.

17 Q. Do you recall when this conversation with David Levy was
18 where you signed a piece of paper at his request?

19 A. Very difficult. I'm not sure. I would say anywhere from
20 three to five years ago, but that's a guess.

21 Q. What money did David Levy give you related to any shares in
22 any company that he held for you?

23 A. None.

24 Q. Did you ever give David Levy authority to sign any
25 documents in your name?

D38rlev5

Champion - direct

1 A. No.

2 Q. I'm going to ask that you look at what is in evidence as
3 Government Exhibit 201-40.

4 A. Yes, ma'am.

5 Q. Have you ever seen this document before?

6 A. No, ma'am.

7 Q. If you can turn to page 3 of the document, which has
8 Exhibit A.

9 A. Yes, ma'am.

10 Q. Do you see where it says your plea on the your name on the
11 right-hand side, David Champion, as a shareholder?

12 A. Yes, ma'am.

13 Q. Did you sign this document, Exhibit A?

14 A. No, ma'am.

15 Q. Does your signature appear above your name? Is that your
16 signature?

17 A. No, ma'am.

18 Q. I'm going to ask you to look at what's been marked for
19 identification, Government Exhibit 201-50.

20 A. OK.

21 Q. Tell me if you recognize the document, and if you do, what
22 is it.

23 A. Yes, ma'am. It is a copy of my signature that I sent to
24 Mr. Reinhardt.

25 MS. COHEN: Your Honor, the government would move

1 Government Exhibit 201-50 into evidence.

2 MR. SHARGEL: Without objection.

3 THE COURT: 201-50 is received in evidence.

4 (Government's Exhibit 201-50 received in evidence)

5 Q. David Champion, is that your handwriting and your signature
6 on Government Exhibit 201-50?

7 A. Yes, ma'am.

8 Q. I'm going to ask you to look at what is in evidence as
9 Government Exhibit 250-1.

10 A. Yes, ma'am.

11 Q. It's a note to Atlas Stock Transfer, attention Amy. Do you
12 know what Atlas Stock Transfer is?

13 A. No, ma'am.

14 Q. Do you have any idea what this document is about?

15 A. No, ma'am.

16 Q. Do you see where it says your name, you're the last name
17 listed in the first block of names, David Champion?

18 A. Yes, ma'am.

19 Q. 136,250 shares?

20 A. Yes, ma'am.

21 Q. Do you have any idea what that's about?

22 A. No, ma'am.

23 Q. I'm going to ask you to look at what is in evidence as
24 Government Exhibit 250.

25 A. 250-11?

D38rlev5

Champion - direct

1 Q. Correct. Sorry. 250-11. That's a document that on top
2 says a company Standard Registrar and Transfer Company.

3 A. Yes, ma'am.

4 Q. Do you know what that company is?

5 A. No, ma'am.

6 Q. Have you ever seen this document before?

7 A. No, ma'am.

8 Q. Do you see your name appears twice where it says, "We
9 acknowledge receipt of certificates of stock in the above
10 company"? The above company is listed as Cardiac Networks,
11 Inc., in the amount of 4.3 million shares and some change. And
12 then, "In accordance with your request, we hand you herewith
13 the following certificates," and your name appears second on
14 that line, second line, certificate number 1664, David
15 Champion, 4,318,182 shares. Do you have any knowledge about
16 those shares?

17 A. No, ma'am.

18 Q. Did you ever receive any of those shares in Cardiac
19 Network?

20 A. No, ma'am.

21 Q. If you can look at the second page, there is a handwritten
22 note on the bottom from the Mosaic Hotel. "Hi, Amy. Please
23 change down these 4 certs and FedEx them back to me. Thanks,
24 David." Do you know anything about that note?

25 A. No, ma'am.

1 Q. Did you have any discussions with David Levy about that
2 note?

3 A. No, ma'am.

4 Q. Then if you flip two more pages and then two more, you will
5 find a certificate or document that has your name on it, a
6 document that says Caspian Energy International to certify that
7 David Champion has 4 million-plus shares.

8 A. Yes, ma'am.

9 Q. Have you found that document?

10 A. Yes, ma'am.

11 Q. Have you ever seen that certificate in your name before?

12 A. No, ma'am.

13 Q. You haven't seen it before?

14 A. No.

15 Q. Do you know anything about it?

16 A. No, ma'am.

17 Q. I'm going to ask you, please, to look at Government Exhibit
18 350-10 in evidence. This is another document that's from the
19 Standard Registrar and Transfer Company. Do you have any
20 knowledge about anything in this document?

21 A. No, ma'am.

22 Q. Ever seen it before?

23 A. No, ma'am.

24 Q. Do you see your name appears first in line there? "In
25 accordance with your request, we hand you herewith the

1 following certificates: Certificate No. 1028 in the name of
2 David Champion, 500,500 shares." Do you know anything about
3 those shares in Banneker?

4 A. No, ma'am, I don't.

5 Q. Did you ever get 500,500 shares of Banneker stock?

6 A. No, ma'am.

7 Q. I'm going to ask you to turn to the fourth page of the
8 document. Do you see under name and address -- this is a
9 letter from Banneker requesting that the stock agent issue
10 certificates of shares. Do you see the first block where it
11 has your name, David Champion?

12 A. Yes, ma'am.

13 Q. Do you see your address is listed as 3109 Northeast 23rd
14 Court, Fort Lauderdale, Florida, 33305?

15 A. Mm-hm.

16 Q. Is that your address?

17 A. No, ma'am.

18 Q. Whose address is that?

19 A. I believe it's Mr. Levy's.

20 MS. COHEN: No further questions, your Honor.

21 MR. SHARGEL: I have no questions, your Honor.

22 MR. SREBNICK: No questions, Judge. Thank you.

23 THE COURT: Doctor, you are excused. Thank you very
24 much.

25 (Witness excused)

D38rlev5

Habayeb - direct

1 THE COURT: Your next witness.

2 MR. MASTER: At this time the government calls Tarik
3 Habayeb.

4 TARIK HABAYEB,

5 called as a witness by the government,

6 having been duly sworn, testified as follows:

7 THE CLERK: Say and spell your name for the record.

8 THE WITNESS: Tarik Habayeb. T like Thomas, A-R-I-K.
9 Last name H like Henry A-B like boy A-Y-E like Edward -- no,
10 I'm sorry. Let me start the last name from the beginning.

11 THE COURT: Just spell it.

12 THE WITNESS: H-A-B-A-Y-E-B.

13 THE COURT: Please sit down. Please get right up to
14 the microphone.

15 Mr. Master.

16 MR. MASTER: Yes, your Honor.

17 DIRECT EXAMINATION

18 BY MR. MASTER:

19 Q. How old are you?

20 A. 34.

21 Q. Where do you live?

22 A. Springfield, Virginia.

23 Q. How far did you go in school?

24 A. I have three Bachelor's degrees.

25 Q. From what school?

D38rlev5

Habayeb - direct

1 A. Virginia Tech.

2 Q. In what fields?

3 A. Biology, finance, and accounting.

4 Q. How many siblings do you have?

5 A. Two.

6 Q. Where do you work?

7 A. I work for a nonprofit called NIRI, the National Investor
8 Relations Institute.

9 Q. What is the National Investor Relations Institute?

10 A. It's a professional association that promotes the investor
11 relations profession.

12 Q. In what capacity?

13 A. Its mission statement is to advance the investor relations
14 profession via the promotion of sound practices, such as
15 financial disclosure in a timely and fair manner, so the
16 general public can make informed investing decisions.

17 Q. What do you do for them?

18 A. I'm an accounting manager.

19 Q. In your daily work, what do you do as the accounting
20 manager?

21 A. I manage the payables and the receivables and I do
22 financial analysis.

23 Q. For how long have you worked there?

24 A. Over 7 years.

25 Q. I'd like to direct your attention to 2008. How old were

1 you and how old was your father at that time?

2 A. I was 29 and my father was 75.

3 Q. What was your father's employment status?

4 A. He was retired at that time.

5 Q. How much in savings had your father accumulated for living
6 off of after he retired?

7 MR. SHARGEL: Objection, foundation.

8 MR. SREBNICK: Objection. I have a relevance issue
9 I'd like to raise at side bar.

10 THE COURT: Overruled.

11 Q. To your knowledge.

12 A. Probably, I'd say, including all of the sources of his
13 retirement income, about 7, 800,000 maybe.

14 Q. What did your father do for a living before he retired?

15 A. He was an electrical engineer for the Department of
16 Defense.

17 Q. Did there come a time in 2008 when your father asked if you
18 would be interested in helping him invest the money that he had
19 in his retirement fund?

20 MR. SHARGEL: I'm going to object to hearsay.

21 THE COURT: Overruled. Finish the question.

22 Q. Did there come a time during that year when your father
23 asked you if you would be interested in helping him invest the
24 money that he had saved?

25 A. Yes.

1 Q. About how much money did he ask for your help in investing?

2 A. About \$450,000.

3 Q. What, if any, investment experience did you have before
4 your father asked you to help?

5 A. I had very little investment experience.

6 Q. What was your reaction to your father's offer?

7 MR. SHARGEL: Objection.

8 THE COURT: Overruled.

9 A. I was very excited.

10 Q. What excited you about this opportunity?

11 A. I was excited because I was always interested in the
12 financial markets, and I wanted to demonstrate to my father
13 that I could handle his retirement in a safe way and get a
14 decent return on it.

15 Q. What did you hope to do with the money in his retirement
16 fund?

17 A. Hoped to grow his account as much as possible.

18 Q. What was the retirement fund invested in at the time that
19 you first were asked by your father to help him invest?

20 A. Mostly blue chip investments.

21 Q. What do you mean by blue chip?

22 A. Stocks: Exxon, Microsoft, Apple.

23 Q. What did you do to decide how, if at all, to change the
24 make-up of your father's retirement portfolio?

25 A. I did some research on the Internet. I started with a

1 website called Investorshub.com and just tried to gain ideas as
2 to where to start.

3 Q. What sort of opportunities were you looking for?

4 A. Since my father was at that time 75 and I knew --
5 obviously, I liked to think he's going to be around for a long
6 time, but realistically he's probably not going to be, so I
7 wanted to find investments that would show a substantial return
8 that he could be around to see.

9 Q. When you got to this iHub website, what sorts of
10 information did you look for?

11 A. I was looking for opportunities that would enable me to
12 grow the account as quickly as possible with as little risk as
13 possible.

14 Q. What, if any, other websites did you see recommended on
15 iHub?

16 A. There was a variety of them. Best Damn Penny Stocks was
17 one, the Stock Twitter, Monster Penny Stocks, among a slew of
18 others, but those were the ones that stand out.

19 Q. Do you recall today who recommended visiting these websites
20 for investing advice?

21 A. A variety of different posters on Investors Hub. I
22 couldn't recall specifically. There was a good number of
23 posters on the Investors Hub message boards that were promoting
24 those sites.

25 Q. Do you know who the people were that were actually posting?

1 A. No.

2 Q. I'd like to show you something that's been marked for
3 identification as Government Exhibit 708. Do you recognize
4 what is depicted in Government Exhibit 708?

5 A. Yes.

6 Q. What is it?

7 A. It's the home page for Best Damn Penny Stocks.

8 Q. How do you recognize it?

9 A. What stands out is the banner at the top.

10 MR. MASTER: The government offers Government Exhibit
11 708.

12 MR. SHARGEL: I have no objection.

13 THE COURT: No objection?

14 MR. SHARGEL: No, sir.

15 MR. SREBNICK: No objection.

16 THE COURT: 708 is in evidence.

17 (Government's Exhibit 708 received in evidence)

18 Q. The ends of this website are cut off, is that correct? In
19 other words, it's not the full width of the web page, right?

20 A. Yes.

21 Q. Now that it is published, can you explain to the jury what
22 about that website is distinctive to you.

23 A. I would say the format, how they have the rectangular boxes
24 for the links for home, services, contact us, legal disclaimer,
25 privacy policy. That just stuck in my mind, that format that

1 they use for the header there.

2 Q. Based on what you read on iHub and your review of the Best
3 Damn Penny Stocks website, what was your understanding of how
4 Best Damn Penny Stocks determined what stocks to recommend?

5 A. My understanding was that they did fundamental analysis,
6 technical analysis. In addition, they had their own
7 proprietary formula for selecting various stocks that they felt
8 would appreciate in value in a very short period of time.

9 Q. What was your understanding based on what you read on this
10 website about the success rate of their recommendations?

11 A. Their success rate, my understanding was it was impeccable,
12 perfect.

13 Q. How did you access this website? In other words, is it
14 publicly accessible?

15 A. Yes.

16 Q. You accessed it just like you would access any other
17 website, right?

18 A. Yes.

19 Q. Available to the general public?

20 A. Yes.

21 Q. I'd like you to read just where it says, "Sign up below" --
22 well, it says right there, "Sign up below now to make sure you
23 never lose again." Do you see that?

24 A. Yes.

25 Q. Do you remember seeing that?

1 A. Yes.

2 Q. What did you do?

3 A. I signed up.

4 Q. On this website, I'd like you to turn to what is on page 2.

5 If you wouldn't mind turning to page 2. I'm sorry. Page 3.

6 My mistake. It says, "Look at our 2008 penny stocks track

7 record below." Then there is a list of ticker symbols. Do you

8 see that?

9 A. Yes.

10 Q. What was your understanding of what this website was

11 telling you about its track record?

12 A. My understanding was their track record was excellent.

13 Q. What effect did that chart, seeing that chart, have on you?

14 A. After signing up, it enticed me to follow their

15 recommendations very closely.

16 Q. Now turn to page 4, please. Could we go to the top first.

17 Do you see where it says, "Sign up free below to get in-depth

18 technical analysis of your favorite penny stocks daily"?

19 A. Yes.

20 Q. What effect did it have on you to hear that they were

21 offering in-depth technical analysis?

22 A. That gave me greater confidence that they not only knew

23 what they were doing, they were cream of the crop at picking

24 stocks that had the potential for substantial gain in a short

25 amount of time.

1 Q. Now look at the bottom of that page. Do you see where it
2 says, "To find and pick the best penny stocks, we look at many
3 aspects of a single stock at a time. Being sure to look at
4 that specific stock and not at the timing may have an uproar of
5 success. That that success may not last long and in time
6 become a loss. You can't time the stock market, but you can
7 find a stock that has a good history of success to help our
8 choice." Then it goes on to talk about how they look for penny
9 stock hits that produce large and consistent gains. Do you see
10 that?

11 A. Yes.

12 Q. What effect did this language have on you?

13 A. It just further -- I looked at it as -- the language in
14 here is sort of the language that you would see in many
15 disclaimers, so I didn't honestly think much of it.

16 Q. You stated that you signed up for another website as well
17 or another service called Monster Penny Stocks, do you recall
18 that?

19 A. Yes.

20 Q. What, if any, relationship between Monster Penny Stocks and
21 Best Damn Penny Stocks were you aware of?

22 A. I was not aware of any relationship.

23 Q. What, if any, disclosures were there that you saw
24 concerning any connection between those two sites?

25 A. I didn't see any disclosures indicating there was any

1 connection.

2 Q. Were there times when some of these services that you
3 signed up for would recommend the same stock or stocks?

4 A. At times, yes.

5 Q. What effect did it have on you when there were multiple
6 sites or multiple sources of information making the same
7 purchase recommendation?

8 A. That strengthened my conviction that it was a potential
9 good investment to make.

10 Q. Did there come a time after you began subscribing to these
11 various email services, including Best Damn Penny Stocks, that
12 you actually began investing some of your father's retirement
13 fund in penny stocks?

14 A. Yes.

15 Q. About how many different penny stocks did you invest in
16 with your father's retirement money?

17 A. Probably around 50 in total. This is at various times over
18 about a year and a half or so.

19 Q. I'll cut to the chase. What happened to your father's
20 retirement money?

21 A. It disappeared pretty much.

22 Q. How much was left before your father shut down the account?

23 A. \$17,000.

24 Q. What was the primary driver of your decision to make those
25 investments that lost all your father's retirement money?

1 A. Sites like Best Damn Penny Stocks.

2 MR. SHARGEL: I object to this. I object to "sites
3 like." Most respectfully, that is too vague and without
4 foundation, "stocks like" or "sites like."

5 Q. How about this. Were there times when you would make a
6 stock purchase decision based on something you read in Best
7 Damn Penny Stocks?

8 A. Yes.

9 Q. Were there times when you would make a stock purchase
10 decision based on what you read on Stock Twitter?

11 A. Yes.

12 MR. SHARGEL: I object to the leading. I object to
13 the leading.

14 THE COURT: Overruled.

15 Q. Were there times when you would make a stock purchase
16 decision based on what you read in Monster Penny Stocks?

17 A. Yes.

18 MR. MASTER: Just a moment.

19 Q. I'm going to show you what's been marked for identification
20 as 605-7A. In preparation for your testimony today, were you
21 asked to review the items in this document?

22 A. Yes.

23 Q. Do you recognize them?

24 A. Yes.

25 Q. What are they?

D38rlev5

Habayeb - direct

1 A. They are messages from Best Damn Penny Stocks.

2 Q. Concerning what stock?

3 A. CNWI.

4 Q. What is CNWI?

5 A. It's a penny stock that I believe was in the medical field.

6 Q. Sir, did there come a time when you actually invested money
7 in CNWI?

8 A. Yes.

9 Q. How much money did you invest?

10 A. Approximately between 80 and \$100,000.

11 Q. When did you make that investment?

12 A. It was in February of 2010.

13 Q. Prior to making the decision to invest, did you see stock
14 purchase recommendations concerning CNWI on various websites?

15 A. Yes.

16 Q. Did some of the websites include Best Damn Penny Stocks?

17 A. Yes.

18 MR. MASTER: Your Honor, at this time the government
19 would offer as Government Exhibit 605-7A.

20 MR. SREBNICK: May I see it? Thank you, Judge.

21 THE COURT: Any objection?

22 MR. MASTER: Your Honor, at this time the government
23 offers it subject to connection.

24 THE COURT: It is admitted subject to connection.

25 (Government's Exhibit 605-7A received in evidence)

1 Q. I'd like you to turn, if you would, to the fifth page of
2 that document. While our paralegal specialist is pulling that
3 up, could you tell the members of the jury what email account
4 you used when you signed up for these various websites.

5 A. I used my Yahoo email account.

6 Q. Can you spell it out for the record.

7 A. Sure. It's V for Virginia, T for tech, C for cat, P for
8 Peter, A for Apple, zero 4@yahoo.com.

9 Q. Where these stock purchase recommendations sent to that
10 account?

11 A. Yes.

12 Q. How regularly would you open the emails, the stock purchase
13 recommendation emails, when you received them?

14 A. Frequently, multiple times a day.

15 Q. I also want to finish your testimony on how much money you
16 invested in CNWI. You stated that you invested between 80 and
17 a hundred?

18 A. Yes.

19 Q. How much money did you lose?

20 A. We lost, it was in the low 40s thousand dollars.

21 Q. How long did it take you to lose that money?

22 A. One month.

23 Q. How long after you purchased the stock in Cardiac Networks
24 based on the stock purchase recommendations did the value of
25 your investments start to decline?

1 A. Started to decline very quickly, within days.

2 Q. Looking at this page here, this stock purchase
3 recommendation, it states, "Again, we have a 5-variable formula
4 in which we created to spot these moves before they happen on a
5 consistent basis. I do not want to reveal them, as it would be
6 like a magician giving his trick away, but I will share it with
7 you a couple."

8 You have testified earlier that you understood, based
9 on your review of these websites, that there was some sort of
10 secret formula that they had, right?

11 A. Yes.

12 Q. What effect did statements like the one I just read have on
13 your decisions to invest?

14 A. It reinforced my decision to invest because it definitely
15 led me to believe that they were privy to information that I
16 wasn't that enabled them to make these picks that had the
17 potential for substantial gains in a short amount of time.

18 Q. At the bottom there is some smaller print. Do you see
19 that?

20 A. Yes.

21 Q. Continuing to the next page. Do you see that language?

22 A. Yes.

23 Q. What is your understanding of what that language
24 represents? Is there a term that you would use to refer to
25 that?

1 A. "Disclaimer."

2 Q. How often did these stock purchase recommendations contain
3 disclaimers?

4 A. All of them did.

5 Q. How often did you read them carefully?

6 A. Almost never.

7 Q. What effect did it have on you to see that there was a
8 disclaimer in fine print below these --

9 MR. SHARGEL: Object to "fine print."

10 THE COURT: Sustained.

11 Q. What effect did it have on you to see these disclaimers
12 under the stock purchase recommendations?

13 A. No effect.

14 Q. What is the reason for that?

15 A. Because disclaimers are ubiquitous. My impression was the
16 disclaimer was stating that, as with any investment, there is a
17 substantial risk of loss, and that's of course true with any
18 investment. I was under the impression the risk I was
19 subjecting myself to was general market risk.

20 Q. You say that you almost never read them. Were there times
21 that you did read them?

22 A. Yes.

23 Q. Were there times when you would read disclaimers and see
24 statements indicating -- actually, I would like you to turn to
25 the next page, if you wouldn't mind. Actually, starting at the

1 very bottom, where it says, "It should be assumed that the
2 owners of Bestdamnpennystocks.com own positions in companies
3 profiled and may buy or sell any time before, during, or after
4 investor relations services Bestdamnpennystocks.com,
5 affiliates, and friends and family of Bestdamnpennystocks.com
6 may not have a position in such securities."

7 Then it goes on and states, "The position may have
8 been acquired prior to the publication of any website
9 information or email alert. You should also be aware that the
10 aforementioned parties do have the right to sell their
11 positions at any time without further notification."

12 What effect did it have on you as the reader of this
13 when you would hear that the people putting out this email
14 stock purchase recommendation service owned a position, might
15 own a position, in the securities?

16 A. It reinforced my decision that it was a potential good
17 investment to make because they were kind of putting their
18 money where their mouth was, so to speak.

19 Q. Based on your reading of these disclaimers, where, if at
20 all, did you gain an understanding that the individuals paying
21 for this would be selling their interest in the stock to you?

22 A. I wasn't aware of that.

23 Q. Had you known that, would it have affected your decision to
24 invest?

25 A. Yes.

D38rlev5

Habayeb - cross

1 MR. MASTER: Nothing further, your Honor.

2 CROSS-EXAMINATION

3 BY MR. SHARGEL:

4 Q. Good afternoon.

5 A. Good afternoon.

6 Q. Sir, you come from where?

7 A. Springfield, Virginia, is where I live.

8 Q. You have spoken to the government lawyers before in
9 connection with this case, right?

10 A. Yes.

11 Q. You spoke to investigators in connection with this case?

12 A. Yes.

13 Q. Do you see Agent Reinhardt over there? You met him before,
14 right?

15 A. Yes.

16 Q. You met the prosecutors of the case before, right?

17 A. Yes.

18 Q. Was it always on the telephone or did you come up here to
19 New York?

20 A. I started out on the telephone, and then I've been here the
21 last couple of days.

22 Q. How many hours would you say you met with the prosecutors?

23 A. About three hours in person.

24 Q. How much time on the telephone?

25 A. Probably an hour or so total on the phone.

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Habayeb - cross

1 Q. During all those discussions that you had with the
2 prosecutors or the agent in the case, did the topic of
3 restitution ever come up?

4 A. Um --

5 Q. Yes or no.

6 A. Yes.

7 Q. Restitution means that you may get your money back? Is
8 that what you are looking for?

9 A. My understanding was that the possibility of that was slim
10 to none.

11 Q. Where did you get to think that it was from slim to none?
12 Withdrawn. Your work has to do with investments and
13 disclosures, right?

14 A. Yes.

15 Q. Essentially, you're in this industry or field of
16 investments, right?

17 A. I'm on the accounting side. I'm not in the investor
18 relations field.

19 Q. You knew full well when you came to New York or you got on
20 that telephone, you knew what restitution was, right?

21 A. Yes, I knew what restitution was.

22 Q. When you discussed that with the prosecutors or the agent,
23 no one said slim to none, no one said that, did they?

24 A. No, they did say that.

25 Q. That you had no chance of receiving restitution?

D38rlev5

Habayeb - cross

1 A. They didn't say no chance, but they said the chance was
2 very small.

3 Q. Would you be interested in getting your money back?

4 A. Of course.

5 Q. Let me ask you this question. There comes a time, and I'm
6 not going to go over the whole story with you, but there comes
7 a time when you are tasked with investing your father's money,
8 right?

9 A. Yes.

10 Q. You said you welcomed that opportunity, and so on and so
11 forth, right?

12 A. Yes.

13 Q. He had about \$400,000 to invest, right?

14 A. 450,000, yes.

15 Q. 450,000. You started out by purchasing blue chip stocks,
16 right?

17 A. When I took over active management of the portfolio, blue
18 chip type positions were already in the portfolio.

19 Q. They were already in the portfolio?

20 A. Yes.

21 Q. You said that there was stock like Apple and Microsoft and
22 other blue chip stocks, they were already in the portfolio?

23 A. Yes.

24 Q. When you had control of the \$450,000, did you then start
25 investing in other kinds of stocks?

D38rlev5

Habayeb - cross

1 A. Yes.

2 Q. Did you first buy blue chips?

3 A. No.

4 Q. Did you buy anything that was somewhere between penny
5 stocks and blue chips?

6 A. Yes.

7 Q. You studied those companies?

8 A. Yes.

9 Q. You made reference to CNWI, do you remember?

10 A. Yes.

11 Q. You were asked by Mr. Master, the prosecutor, what does the
12 company do, right?

13 A. Yes.

14 Q. You weren't exactly sure. You said it was something to do
15 with medical services, right?

16 A. Yes.

17 Q. After reading these websites, did you ever want to find out
18 what the company did?

19 A. Yes, I did, and there wasn't that much information to find.

20 Q. Did you have any idea as to what resources might be
21 available to you to find out what the company did?

22 A. I had a pretty good idea, yes.

23 Q. Were you able to find those resources?

24 A. Some.

25 Q. Did you study facts and figures relating to the company, or

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Habayeb - cross

1 were they not available to you?

2 A. I studied as much as I could.

3 Q. Do you remember what you studied specifically with this
4 company CNWI?

5 A. I don't recall exactly. I believe I made an attempt to
6 obtain the company's financials.

7 Q. Did you look at those financials?

8 A. I don't recall being able to obtain the financials.

9 Q. But you invested anyway?

10 A. Yes.

11 Q. You say you invested in over 50 different companies?

12 A. Yes.

13 Q. Because you were interested in making -- and these are your
14 words, not mine -- a substantial gain in a short amount of
15 time?

16 A. Yes.

17 Q. You were 29 years old that year. You're 35 or 36 now?

18 A. 34.

19 Q. 34 years old. 34 years old and the experience you have
20 gained in the last 7 years or so with this company that you
21 work for, there's not many cases where you have substantial
22 gain in a short amount of time in startup companies, is it?

23 MR. MASTER: Objection.

24 THE COURT: Overruled.

25 A. There are some.

D38rlev5

Habayeb - cross

1 Q. There are some, of course. But did you know that you were
2 investing in startup companies at the time that you took your
3 father's money and went from blue chip stocks like Apple and
4 Microsoft and started investing in startup companies? Were you
5 aware of that?

6 A. Yes.

7 Q. You knew full well when you were 29 and when you are 34
8 that there is a high degree of risk in startup companies,
9 right?

10 A. Yes.

11 Q. That's what those disclaimers, whether it was this website
12 or some other website, that's what those disclaimers were
13 about, right?

14 A. My understanding was the disclaimers were explaining that
15 there was general market risk, as with any other investment.

16 Q. The disclaimers said there was a high degree of risk and
17 you may lose all your money, didn't it have words like that?

18 A. Yeah, but all disclaimers have words like that.

19 Q. Yeah, but disclaimers are there for -- do you understand
20 now, based on your work experience, that disclaimers are there
21 for a purpose?

22 A. Of course.

23 Q. So that people don't make investments blind?

24 A. Yes.

25 MR. SHARGEL: I have no further questions.

D38rlev5

Habayeb - cross

1 THE COURT: Mr. Srebnick.

2 MR. SREBNICK: Yes, Judge.

3 CROSS-EXAMINATION

4 BY MR. SREBNICK:

5 Q. Mr. Habayeb, my name is Howard Srebnick. I would like to
6 ask you some questions. I represent Donna Levy. You don't
7 know Donna Levy?

8 A. No.

9 Q. We have never spoken before, you and I, correct?

10 A. Correct.

11 Q. You told us your background includes three Bachelor's
12 degrees, two of them in the field of one finance and one
13 accounting?

14 A. Yes.

15 Q. Do you know how to read a balance sheet?

16 A. Yes.

17 Q. Do you know how to read a financial statement?

18 A. Yes.

19 Q. Do you know what revenues of a company are?

20 A. Yes.

21 Q. Do you know what expenses of a company are?

22 A. Yes.

23 Q. Do you know that revenue minus expenses will determine the
24 gross profits of a company?

25 A. Yes.

D38rlev5

Habayeb - cross

1 Q. There might be other expenses of a company that might be
2 taxes, etc., and that a company may or may not have earnings
3 after taxes, correct?

4 A. Yes.

5 Q. I'll cut right to the chase. What were the earnings of
6 Cardiac Network, Inc. at the time you invested your father's
7 retirement money in it?

8 A. There weren't any earnings.

9 Q. What were the dividends that this stock was going to pay
10 your father for investing in the stock when you made that
11 decision to buy?

12 A. There were no dividends.

13 Q. No earnings, no dividends. And you know what those terms
14 mean because of your education and your background, correct?

15 A. Yes.

16 Q. You knew that this was a penny stock, right?

17 A. Yes.

18 Q. You know that the difference between a penny stock and what
19 Mr. Shargel calls a blue chip stock is that with regard to blue
20 chip stocks that your father had invested in, there is
21 financial information available to the public about the blue
22 chip companies, correct?

23 A. Yes.

24 Q. One can go to, whether it be a website or a brokerage house
25 or for that matter the library, and learn about the history of

D38rlev5

Habayeb - cross

1 the company, correct?

2 A. Yes.

3 Q. One can look at those financial statements of a company, a
4 blue chip company, right?

5 A. Yes.

6 Q. For a blue chip company, someone who wants to invest in
7 such a company can look at the balance sheets and the earning
8 statements of that company for years past, correct?

9 A. Yes.

10 Q. But even with a blue chip company, even a company like
11 Apple, the stock can go down, correct?

12 A. Yes.

13 Q. Earnings can go down?

14 A. Yes.

15 Q. Revenues can go down?

16 A. Yes.

17 Q. But with regard to penny stocks, you as a person
18 considering putting money into such a stock, such information
19 is simply not available to the public, correct?

20 A. Yes.

21 Q. There is no registration requirement for these stocks,
22 correct?

23 A. Yes.

24 Q. You knew, sir, based not only on your education, not only
25 on your Bachelor's degree, not only on your accounting

D38rlev5

Habayeb - cross

1 training, and not only from your finance training, you knew
2 from all of your experience by age 29, you knew that a penny
3 stock was a much different type of, shall we say, gamble than
4 putting your father's money in blue chip stocks, correct?

5 A. It was a different type of investment. I wouldn't classify
6 it as a gamble, though.

7 Q. You had no information that a particular penny stock
8 company even makes money, correct?

9 A. Sometimes there is information, sometimes there isn't.

10 Q. Cardiac Network, the one that I think you told us about,
11 you were investing in a company that had no earnings yet,
12 correct?

13 A. Yes.

14 Q. You told us earlier that sometimes you would make
15 investment decisions based on fundamentals or fundamental
16 analysis, other times on technical analysis, correct?

17 A. No. I was describing the how Best Damn Penny Stocks
18 chooses their picks. My understanding was they did technical
19 analysis, fundamental analysis, and they had also had their own
20 proprietary formula.

21 Q. I'd like to define those terms, if we could. Fundamental
22 analysis, as those terms are used in the industry, means
23 studying the fundamentals of the company that one might be
24 buying stock in. I ended with a preposition. Right?

25 A. Yes.

D38rlev5

Habayeb - cross

1 Q. Now, to study the fundamentals of the company, there needs
2 to be financial information about the company, correct?

3 A. Yes.

4 Q. There needs to be a balance sheet?

5 A. Yes.

6 Q. There needs to be an income statement?

7 A. Yes.

8 Q. But with regard to a company like Cardiac Network, no such
9 fundamental information was available when you made a decision
10 to buy the stock, correct?

11 A. Yes.

12 Q. So, what actually you were -- I won't use the word gamble,
13 but what you were putting money into was technical analysis of
14 this stock, right?

15 A. Yes.

16 (Continued on next page)

D38LLEV6

Habayeb - cross

1 BY MR. SREBNICK:

2 Q. Technical analysis is something completely different. It
3 has nothing to do with the fundamentals of a company, correct?

4 A. Yes.

5 Q. It's somebody looking at the movement of a stock price on a
6 graph and saying that looking at the stock price as it went up
7 or down in the past, they're going to guess or they're going to
8 predict which way that stock price is going to go in the
9 future, right?

10 A. Yes.

11 Q. That's what technical analysis is, right?

12 A. Yes.

13 Q. It really makes no difference what the name of the company
14 is. It could be Cardiac, it could be widget, it could be
15 anything. What a technical analysis does is it says forget
16 about the company and what it does for a business. Let's look
17 at how the stock price moved over time and we're going to
18 predict where it's going to go in the future. Right?

19 A. Yes.

20 Q. You, sir, know with three bachelor's educations, with
21 experience in this industry, nobody can predict which way a
22 stock is going to go based on this type of technical analysis,
23 right?

24 A. Yes.

25 Q. And so in fact it is a gamble if you're going to put your

D38LLEV6

Habayeb - cross

1 father's money based on technical analysis, it's a gamble,
2 isn't it?

3 A. I would not classify it as a gamble. Technical analysis is
4 powerful in its own right. And it, you know, it has the
5 capability of producing returns if somebody knows what they're
6 doing.

7 Q. You, sir, were a day trader as well, were you not?

8 A. Yes.

9 Q. Which meant that you would buy a stock in one instance and
10 within minutes you would try to sell it, correct?

11 A. Sometimes.

12 Q. Which meant that, again, what the company did, whether it
13 produced Cardiac monitors, widgets, sandwiches, it didn't
14 really matter what the company did. You were trying to play
15 that little movement in the stock. Right?

16 A. Yes.

17 Q. And you did that with upwards of 70 plus companies, right?

18 A. Around there, yes.

19 Q. You took your father's money out of blue chip stocks,
20 long-term investment stocks, and you made the decision for your
21 father to put his money in day trading, trying to predict which
22 way a stock would hiccup within minutes so you could make a
23 quick profit, correct?

24 A. Sometimes. And sometimes I bought stocks like Cardiac
25 Networks with the intent to hold them for a longer period.

D38LLEV6

Habayeb - cross

1 Q. Without any fundamental information, correct?

2 A. Correct, sometimes without fundamental information, and
3 sometimes with some fundamental information.

4 Q. Now I'd like to ask you about the disclaimers that were
5 available to you, which I believe you told this jury were
6 ubiquitous -- and maybe we should spell that word.

7 THE COURT: Don't spell it. Just tell us what it is.
8 It means everywhere, right?

9 MR. SREBNICK: I knew how to spell it but not what it
10 meant.

11 Q. It means everything, right?

12 THE COURT: Everywhere.

13 MR. SREBNICK: Everywhere. See, I didn't know what it
14 meant.

15 Q. These disclaimers are everywhere, sir, are they not?

16 A. Yes.

17 Q. And while the prosecutor referred to it as the fine print,
18 indeed, the disclaimer that was shown to you on the screen was
19 in exactly the same size print to my eye, which is not perfect,
20 when we saw it on the screen.

21 MR. SREBNICK: And I would ask it be published at this
22 time if we could do that. I believe it's in evidence already.
23 I think it's 605-7.

24 THE COURT: 605-7A.

25 MR. SREBNICK: If I could ask it be put back up on the

D38LLEV6

Habayeb - cross

1 screen, please.

2 THE COURT: What's your question, Mr. Srebnick?

3 MR. SREBNICK: I'd like to put the disclaimer back on
4 the screen.

5 THE COURT: The size of the print?

6 MR. SREBNICK: And the content of it as well.

7 THE COURT: OK.

8 MR. SREBNICK: May I have the pointer?

9 THE COURT: Do you want to go over and point with your
10 finger.

11 MR. SREBNICK: Yes, please.

12 I'd like to turn to page No. 5, I believe, on the
13 exhibit.

14 THE COURT: That's four that you have up.

15 MR. SREBNICK: Next page. Let me use the Elmo.

16 May I use the Elmo?

17 THE COURT: Yes.

18 MR. SREBNICK: 605-7.

19 Q. We already heard that the very first thing the disclaimer
20 tells you is to never invest in any stock featured on our site
21 or emails unless you can afford to lose your entire investment.
22 You saw that but disregarded that, correct?

23 A. I didn't disregard that. I saw that and, like I said,
24 that's the sort of thing you'll see from disclaimer from
25 Goldman Sachs or from anywhere else in which they're advising

D38LLEV6

Habayeb - cross

1 you on investments.

2 Q. Goldman Sachs is a registered investment adviser, correct?

3 A. Yes.

4 Q. Bestdamnpennystocks told you point blank they are not a
5 registered investment adviser, correct?

6 A. Yes.

7 Q. Right there on the third line, right?

8 A. Yes.

9 Q. Not only that, but bestdamnpennystocks.com told you in
10 their printed disclaimer, which is the same size font as CNWI
11 last line up there, that they are going to be compensated.
12 It's right here right where my finger is, if you can see it,
13 third line from the bottom. They expect to be compensated
14 \$150,000 cash from a noncontrolling third party for a Cardiac
15 investor relations service.

16 Do you see that?

17 A. Yes.

18 Q. They're telling you that they have a conflict of interest
19 because they're being paid by Cardiac to advertise the stock.

20 MR. MASTER: Objection.

21 THE COURT: Overruled.

22 Q. They disclose to you --

23 THE COURT: I think that -- I'm taking that as a
24 question.

25 MR. SREBNICK: It is.

D38LLEV6

Habayeb - cross

1 THE COURT: He didn't answer.

2 Q. Do you see it?

3 A. Yes.

4 Q. So you're being told by bestdamnpennystocks we are not
5 Goldman Sachs. No, we are not a paid adviser. We are an
6 advertiser being paid to advertise this company?

7 A. Yes.

8 Q. And disclaimers like that are ubiquitous, are they not?

9 A. I was speaking in general terms, sir.

10 MR. SREBNICK: Judge, that's all I have.

11 MR. MASTER: No redirect, your Honor.

12 THE COURT: You're excused. Thank you very much.

13 Do you have another short witness?

14 MR. MASTER: No, your Honor.

15 THE COURT: Ladies and gentlemen, that finishes the
16 witnesses for today. We'll resume on Monday morning at
17 10 o'clock. Remember my instructions. Don't do any research.
18 Keep open minds. Don't discuss the case.

19 It's going to be much nicer tomorrow than it was
20 today.

21 MR. SREBNICK: Your Honor, I think tomorrow is
22 Saturday. Are we expected to be here tomorrow?

23 THE COURT: Yes, Mr. Srebnick. You'll be the only
24 one.

25 Have a nice weekend.

D38LLEV6

1 (Jury not present)

2 THE COURT: I want to bring to your attention that
3 juror No. 12, Mr. Knibb, you remember him. He has a problem
4 with family court and he wants to -- tell us exactly what he
5 wants.

6 THE LAW CLERK: Your Honor, he would just like the
7 Court to either call family court or write a letter on his
8 behalf seeking an adjournment of the child support hearing that
9 he had difficulty scheduling for some time.

10 MR. SHARGEL: We knew about that going in.

11 THE COURT: I'm going to ascertain the information,
12 you know, where he wants me to write and I'll get him both a
13 write and call.

14 MS. COHEN: Thank you, your Honor.

15 MR. SHARGEL: Thank you, your Honor. Have a good
16 weekend.

17 THE COURT: How are we doing for witnesses next week?

18 MS. COHEN: We're doing well. We're have them lined
19 up for the entire week.

20 THE COURT: And you'll have them in the witness room.

21 MS. COHEN: Apologies again, your Honor. Yes.

22 THE COURT: You let the defense know what the order of
23 witness is?

24 MS. COHEN: Yes, your Honor. I emailed them last
25 night who was for Monday, possibly was for Tuesday, and we're

D38LLEV6

1 going to regroup and send them the order.

2 THE COURT: Any complaints or observations,
3 Mr. Shargel?

4 MR. SHARGEL: No complaints. No observations.

5 THE COURT: OK. All right. Everybody have a nice
6 weekend.

7 MR. SHARGEL: You as well, your Honor.

8 MS. COHEN: Thank you, your Honor.

9 (Adjourned to March 11, 2013, at 10 a.m.)

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